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and

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

WYNN LAS VEGAS LLC d/b/a/ WYNN LAS
VEGAS, a Nevada limited liability company,

Plaintiff,

vs.

GGW DIRECT, LLC, a Delaware limited
liability company; GGW BRANDS, LLC, a
Delaware limited liability company; GGW
EVENTS, LLC, a Delaware limited liability
company; MANTRA FILMS, INC., a
suspended Oklahoma corporation; BLUE
HORSE TRADING, LLC, a California limited
liability company; PEPE BUS, LLC, an inactive
Montana limited liability company; SANDS
MEDIA, INC., a revoked Nevada domestic
corporation; JOSEPH R. FRANCIS, an
individual; DAVID R. HOUSTON, an
individual; and DAVID R. HOUSTON, LTD., a
Nevada professional corporation, doing business
as THE LAW OFFICE OF DAVID R.
HOUSTON,

Defendants.

Adversary Case No.: 13-01050-MMN

Chapter 11

**DECLARATION OF MALHAR S. PAGAY
REGARDING REPLY RE: MOTION FOR
ORDER APPROVING STIPULATION
REGARDING RESOLUTION OF
REMOVED ACTION**

Hearing

Date: August 28, 2013
Time: 9:30 a.m.
Place: Courtroom 2
U.S. Bankruptcy Court
District of Nevada
Foley Federal Building
300 Las Vegas Boulevard South
Las Vegas, Nevada 89101

1 I, Malhar S. Pagay, declare as follows:

2 1. I am an attorney, duly admitted to practice before the United States Court of Appeals
3 for the Ninth Circuit, the United States District Courts for the Central, Eastern, Northern and
4 Southern Districts of California and this Court, and am counsel to Wynn Las Vegas, LLC d/b/a
5 Wynn Las Vegas ("Wynn Las Vegas"), in connection with the legal disputes described herein.

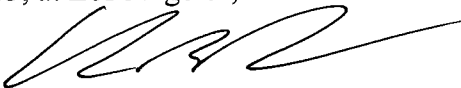
6 2. This Declaration is submitted regarding the *Reply in Support of the Motion for Order*
7 *Approving Stipulation Regarding Resolution of Removed Action* (the "Reply"); and *Motion for*
8 *Order Approving Stipulation Regarding Resolution of Removed Action [Docket No. 23]* (the
9 "Motion"), filed by Wynn Las Vegas in the above-captioned case. Terms not otherwise defined
10 herein shall have the same meaning as set forth in the Motion or Reply, as applicable.

11 3. Attached hereto as **Exhibit "G"** is a true copy of the Transcript of Proceedings
12 Before the Honorable Sandra Klein, United States Bankruptcy Judge, taking place in the chapter 11
13 cases of the Debtors on August 7, 2013.

14 4. Attached hereto as **Exhibit "H"** is a true copy of the Transcript of Proceedings
15 Before the Honorable Sandra Klein, United States Bankruptcy Judge, taking place in the chapter 11
16 cases of the Debtors on April 10, 2013.

17 I declare under penalty of perjury that the foregoing is true and correct and that if called upon
18 as a witness, I could and would competently testify thereto.

19 Executed this 21st day of August, 2013, at Los Angeles, California.

20 

21 MALHAR S. PAGAY
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EXHIBIT G

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

--oOo--

In Re:) Case No. 2:13-bk-15130-SK
)
GGW BRANDS, LLC and GGW) Chapter 11
MARKETING, LLC,)
) Los Angeles, California
Debtors.) Wednesday, August 7, 2013
9:30 a.m.

HEARING RE MOTION FOR ORDER
EXTENDING THE TIME WITHIN
WHICH GGW MARKETING, LLC MAY
FILE NOTICES OF REMOVAL OF
CIVIL PROCEEDINGS

HEARING RE MOTION FOR APPROVAL
OF SETTLEMENT WITH WYNN LAS
VEGAS, LLC AND STEPHEN A. WYNN

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SANDRA KLEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES: (Cont'd.)

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1 LOS ANGELES, CALIFORNIA WEDNESDAY, AUGUST 7, 2013 9:30 A.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: Matter Number 49, GGW.

5 MR. HEYN: Good morning, your Honor. Matt. Heyn
6 appearing on behalf of the Trustee and GGW Marketing, LLC.

7 THE COURT: Good morning, Mr. Heyn.

8 MR. MEDLER: Good morning, your Honor. John
9 Medler appearing on behalf of creditor Tamara Favazza.

10 THE COURT: Good morning, Mr. Medler. Did your
11 case settle?

12 MR. MEDLER: Yes, ma'am. The eleventh hour.

13 THE COURT: Wonderful. Okay.

14 MR. PAGAY: Good morning, your Honor. Malhar
15 Pagay, Pachulski, Stang, Ziehl & Jones, pro counsel for Wynn
16 Las Vegas, LLC.

17 MR. KOLODZI: Good morning, your Honor. Michael
18 Kolodzi on behalf of GGW Global Brands, Inc., the interested
19 party.

20 THE COURT: Pronounce your last name.

21 MR. KOLODZI: Kolodzi.

22 THE COURT: Kolodzi.

23 MR. KOLODZI: Thank you.

24 THE COURT: Thank you.

25 MS. DE BARTOLOMEO: Good morning, your Honor.

1 A.J. De Bartolomeo from Girard Gibbs on behalf of the class
2 action creditors.

3 THE COURT: And your last name again, ma'am?

4 MS. DE BARTOLOMEO: De Bartolomeo.

5 THE COURT: Please spell that.

6 MS. DE BARTOLOMEO: Are you serious?

7 THE COURT: Yes.

8 MS. DE BARTOLOMEO: No. I'm sorry. I've been
9 asked that question since I was three. I didn't know if
10 people were kidding me.

11 THE COURT: No, no. I'm serious.

12 MS. DE BARTOLOMEO: Capital D, as in David, E.
13 Then there's a space. Capital B, as in boy, A-R-T-O-L-O-M,
14 as in Michael, E-O.

15 THE COURT: Okay.

16 MS. DE BARTOLOMEO: Just pronounce everything you
17 see.

18 THE COURT: Okay. Perfect. Okay.

19 And actually, Number 49, which I called first, was
20 the unopposed motion for order extending time to file
21 notices of removal. And that was unopposed, and that was
22 granted. So we're actually all here on Matter Number 50,
23 which is the motion for approval of the settlement.

24 One more.

25 MR. LANGBERG: Good morning, your Honor. Mitchell

1 Langberg, Brownstein, Hyatt, Farber, Schreck for Wynn Las
2 Vegas.

3 THE COURT: Okay. Great.

4 All right. So we're here on the moving for
5 approval of settlement. I believe each of you received a
6 short little tentative that came out yesterday via e-mail.

7 Mr. Heyn, I assume that you don't oppose the
8 tentative?

9 MR. HEYN: We appreciate the lengthy analysis, and
10 we would submit on the tentative.

11 THE COURT: Okay. So then I'd like to hear from
12 each of the opposing creditors. Mr. Medler, because you
13 signed in first, I'll hear from you first.

14 MR. MEDLER: Thank you, your Honor.

15 Your Honor, I represent Tamara Favazza, who, if
16 Wynn Las Vegas' claim is not allowed, would be the single
17 largest creditor of the Debtor's with a claim of almost \$6
18 million. And while our judgment is against the precursor
19 companies, I believe we've submitted evidence to the Court
20 showing that the Debtors are, in essence, the successor
21 corporations by essentially a name change that occurred in
22 approximately November 2010.

23 And Ms. De Bartolomeo has also submitted some
24 deposition testimony from the former vice president of
25 Mantra Films, Inc., who said that basically we went

1 essentially overnight from Mantra Films, Inc. to the GGW
2 companies. And that's essentially what happened. They just
3 changed the name.

4 So we have a legitimate debt of -- or judgment of
5 \$6 million essentially against the precursor company, which
6 we believe is a very legitimate debt against the Debtors.
7 And what is at stake here for my client, your Honor, is that
8 if the Trustee is successful in obtaining the intellectual
9 property and selling the company on the auction block for
10 what I believe should be several million dollars, my client
11 stands, as a result of this settlement, to lose, I believe,
12 between 1 and \$2 million.

13 And so it is a very important motion for my
14 client. It's something that we take very seriously and I
15 know your Honor takes it seriously. But it's something that
16 we believe that this settlement is completely unfair to our
17 client and basically massively dilutes her claim to the
18 point where she will get perhaps a few hundred thousand
19 dollars at the end of the day on what is a \$6 million claim
20 and a legitimate claim against the company.

21 I'd like to frame the issue, if we could, your
22 Honor, by something that I hope we can all agree with. If
23 the Court were to rule that the law prohibited reverse veil
24 piercing, then there is no question that this settlement is
25 unfair.

1 For example, if the claim of Wynn Las Vegas, this
2 reverse veil piercing claim, was beyond the statute of
3 limitations -- and we all agreed with that -- they would
4 have a nonviable claim. So to legitimize a nonviable claim
5 for some \$27 million and thereby dilute the claims of my
6 client and other unsecured creditors, I think we would all
7 agree that that is an unfair settlement that should not be
8 approved.

9 So at the end of the day, the analysis really
10 comes down to whether this reverse veil piercing claim
11 should be allowed or not.

12 Now, with regard to this \$1.8 million of money,
13 I'm not going to spend much time on that, your Honor. I
14 believe they should have gotten a little bit more, but at
15 the end of the day, what's good about that is the Trustee
16 gets paid. And we would like that too. Because to date, I
17 think the Trustee, I would say has done an excellent job for
18 all the unsecured creditors.

19 I wanted to make that point for Matt and his firm.
20 I think they've done an excellent job. And they deserve to
21 be paid, and I hope at the end of the day, when this company
22 is sold on the auction block, they will be paid for their
23 efforts because I think they've done an outstanding job so
24 far.

25 That's the only good thing about this agreement,

1 your Honor. What is bad about it is it legitimizes a \$27
2 million claim, which is nonviable. And I wanted to point
3 something out to the Court that you may not be aware of is
4 that there is another claim out there in the woodworks that
5 is coming in literally three days.

6 A former attorney named Brian Raymont (phonetic)
7 for the Debtors has gotten an \$8.8 million judgment against
8 Joe Francis. Half of that, 4.4 million, is punitive
9 damages. And I would say something like 80-percent -- you
10 can correct my math if I'm wrong, but something like 80-
11 percent of that is a claim for intentional infliction of
12 emotional distress filed against Mr. Francis for doing
13 things like telling Mr. Raymont's daughters that he was a
14 thief, things like that. I won't go into it.

15 But essentially what's going on is, about 80-
16 percent of that \$8.8 million claim is going to be a reverse
17 veil piecing claim exactly like the Wynn claim. So it's not
18 just \$27 million. Ultimately, Mr. Raymont is going to come
19 in and try and ride the coattails of this ruling to have his
20 entire judgment of 8.8 million also recognized. And you can
21 imagine that's going to significantly dilute the claim of my
22 client.

23 Now, your Honor, one thing I did want to talk
24 about with respect to these choices of law and the matters
25 of law, as we know, we've talked about the possibility of

1 Delaware, California and Nevada. And I wanted to point
2 something out to the Court. With respect to Delaware, I
3 think we're in agreement -- at least I am in agreement with
4 Mr. Wynn that Delaware law under no circumstances would
5 apply.

6 And when Mr. Pagay filed his reply brief, he cited
7 a case called First National Bank. It's the Cuban Bank case
8 from the United States Supreme Court. It's in Mr. Pagay's
9 reply brief, if your Honor wants the cite. And I believe
10 that they're absolutely correct that that case stands for
11 the proposition that when outside third parties are
12 involved, the Internal Affairs Doctrine simply does not
13 apply. And therefore, Delaware law under no circumstances
14 would apply. And I think we are in agreement with that. So
15 I think the issue boils down to California and Nevada. At
16 least that's our position.

17 In order to determine this analysis, your Honor, I
18 believe we need to start with what is the forum state.
19 Because in most cases, that's a pretty clear thing. But in
20 this case, there is a little bit of an issue on that. I
21 would suggest to you that because they're bringing this
22 settlement agreement to you to decide and you essentially
23 have to rule on whether reverse veil piercing is legitimate
24 in order to determine whether the good-faith -- whether this
25 is a good-faith settlement, in essence, you are the forum.

1 And because you are sitting in California, the
2 forum state is California. And there has been some
3 discussion about this transfer of venue and so on, and I
4 wanted the Court to also realize that if they want to go
5 forward and legitimize their claim for reverse veil
6 piercing, in order to do that, because of the stay in
7 bankruptcy, they're obviously going to have to come to you
8 first and get a lift of that stay.

9 And you may rule for them, you may rule against
10 them, but when you rule on that issue on lifting the stay,
11 you're going to have to be taking, of course, into account
12 the situation with regard to the other creditors and the
13 fairness of that. And so when the Court rules at that
14 stage, this Court will be the forum state. So it's our
15 position that this court, California is the forum state.

16 With regard to choice of law, this is -- I believe
17 this is almost like a bar exam question. This is so
18 complicated with all these issues regarding the choice of
19 law. And I'd like to try and delve through it a little bit
20 if I can, your Honor.

21 I think on the choice of law rules, the way I've
22 analyzed it is you have essentially five choices of choice
23 of law analysis. And the first choice is the Ninth Circuit
24 ruled that the law of the forum governs alter ego issues.
25 This is something that Mr. Heyn cited in his reply brief

1 that I had not seen before. But apparently, there's three
2 cases that Mr. Heyn has cited from the Ninth Circuit. One
3 is Schwarzkopf (phonetic). There's SEC vs. Hickey and In Re
4 Turner.

5 And in each of those cases, they said if the issue
6 is alter ego, we apply the law of the forum state in
7 determining whether a corporation is the alter ego of an
8 individual. And so because we believe that California is
9 the forum state, California law should apply. So that's
10 choice one. And if the Court were to want to go with that
11 option for a choice of law, that would be fine with Ms.
12 Favazza.

13 The second issue would be the California
14 Government interest approach. If the Court is sitting in
15 diversity, it normally applies the choice of law rules of
16 the state where it sits. And again, because we believe that
17 the forum state is California, the Government interest test
18 should apply here.

19 And in that scenario, you basically take the
20 interests of California and compare them with the interests
21 of Nevada. Let's talk about the interests of California, if
22 we could.

23 California has an interest in making sure that
24 LLCs that do business in California pay the debts of the
25 corporation. And it will be very difficult for them to pay

1 the debts of their corporation if they're busy paying for
2 gambling debts and defamation cases and intentional
3 infliction of emotional distress caused by Mr. Francis
4 himself.

5 California has an interest in making sure that
6 corporate creditors in California who extend credit are
7 protected. California has an interest in making sure that
8 LLCs operating in California pay the victims of their
9 corporate torts.

10 And I might point out, your Honor, that in our
11 case -- I don't know if you know too much of the details of
12 our case, but it was essentially a sexual assault on my
13 client that was then filmed, and without her consent
14 broadcast across the United States and internationally
15 without her consent.

16 THE COURT: I've -- sorry to interrupt you. I
17 have read the pleadings in that case.

18 MR. MEDLER: Okay. Thank you, your Honor.

19 So California would have an interest in making
20 sure that California corporations that engage in that
21 conduct pay the victims of those torts.

22 With regard to Mr. Raymont's ultimate claim, part
23 of that claim is not a corporate veil -- it's not a reverse
24 veil piercing claim. It's, you didn't pay my legal bills.
25 And as far as that portion of Mr. Raymont's claim is going

1 to be concerned, California has an interest in making sure
2 that corporations in California pay their legal bills and
3 Honor their contracts.

4 Now let's talk about the interest of Nevada. The
5 interests of Nevada is basically to make sure that a casino
6 owner which got cheated on a gambling debt by an individual
7 can attach the assets of that individual's corporation or
8 that a casino owner who is defamed can attach the corporate
9 assets of the corporation of the shareholder that defamed
10 him.

11 I would submit to your Honor that when you compare
12 those governmental interests, California's interests are far
13 superior than those of Nevada. And under the governmental
14 interest approach, California again law should apply.

15 If the Court were to determine, however, that
16 Nevada was the forum state, then Nevada applies the most
17 significant relationship test. And basically, again, it's
18 an analysis of the factors. But you look to basically which
19 company -- or which state, rather, has the most significant
20 interests and closest relationship with the facts in this
21 case.

22 Now, let's remember, this is not the case for
23 defamation. This is not the case for, you didn't pay me my
24 gambling debt. This is alter ego and reverse piercing of
25 the corporate veil. That's what is of interest here. And

1 so that's what we have to focus on.

2 So in analyzing the most significant relationship,
3 you would look to the fact that Mr. Francis has basically
4 taken his money and put it into these corporations in
5 California. These companies are operating in California.
6 Their employees are in California. The Trustee is operating
7 the company in California. The records of the company are
8 in California. Basically, all the factors in this case are
9 in California.

10 So under the most significant relationship test, I
11 would argue again that California law applies. And if we --
12 if we were to analyze the factors of Section 154 of the
13 restatement, again you can see that California law applies.
14 If we want to just go through a few of those. For instance,
15 the needs of the interstate system. Interstate commerce, I
16 believe, would be adversely affected if creditors in other
17 states can't get repaid for their credit extended in
18 California.

19 It also requires us to look at the relevant
20 policies of other states that might be affected. My client
21 is from Missouri. The tort occurred in Missouri, and
22 Missouri has an interest in making sure Missouri victims of
23 corporate torts get compensated.

24 And the basic policies underlying this field of
25 law are basically that there is fair, equal treatment of

1 corporate creditors. I think in your tentative ruling, your
2 Honor, you said that the expected -- expectations of
3 unsecured creditors are that they share pro rata with all
4 the other unsecured creditors. And I think that's
5 absolutely right.

6 This gives Mr. Wynn a \$250,000 preference. This
7 allows him to walk away with a large sum of money, and this
8 allows him to legitimize what we believe is an invalid claim
9 of reverse veil piecing. We believe, then, under that most
10 significant relationship test, that California applies.

11 I've already spoken -- the fourth option is the
12 internal affairs. And I think that would point to Delaware,
13 and I don't think that that applies because of the Cuban
14 Bank case that Mr. Pagay cited.

15 And then the last opportunity as far as choice of
16 law analysis, your Honor, would be specific provisions of
17 the restatement of conflicts. And Mr. Heyn points out in
18 his brief that Nevada's law technically says that you look
19 at the most significant relationship and the 154 factors
20 unless a more specific provision applies.

21 And Mr. Heyn has pointed to this Section 150
22 involving multi-state defamation. And I would suggest to
23 your Honor that this is not the defamation case. The
24 defamation case is over and is on appeal. This is the alter
25 ego reverse veil piercing case. So we believe that Section

1 150 does not apply.

2 If you're going to apply a more specific section
3 of the restatement, there is one called Section 174. And
4 that's entitled "Vicarious Liability." And that says that
5 the law selected by application of the rule of 145
6 determines whether one person is liable for the tort of
7 another person. That's about as close as we can get here,
8 your Honor.

9 And so if you're going to basically apply Section
10 174, that brings us right back again to the 145 factors that
11 I just pointed out. So essentially, whichever choice of law
12 analysis that you come up with, your Honor, it's our
13 position that California law applies.

14 THE COURT: And let me stop you there. I'm aware
15 of the Postal case. What about the nominee theory?

16 MR. MEDLER: Your Honor, we believe that the
17 nominee theory is primarily used in the context of tax
18 cases. And -- go ahead.

19 THE COURT: I read the cases on which the recent
20 Ninth Circuit cases were based, and I disagree with you. I
21 think those cases happen to be IRS cases, but the underlying
22 issue is a California state law issue regarding nominee
23 liability.

24 So I don't agree with your analysis of -- you
25 know, that California -- those cases only apply to tax-

1 related issues. I don't think that's a correct reading of
2 the law.

3 MR. MEDLER: Your Honor -- and of course that's
4 why reasonable minds can differ. And so of course --

5 THE COURT: Of course.

6 MR. MEDLER: -- I would respectfully disagree.
7 But I will tell you that with respect to this nominee
8 theory, if you allow the nominee theory, then that
9 essentially swallows the rule. There's no point. I mean,
10 you might as well allow reverse veil piecing because in a
11 nominee theory, all you have to do is establish a nexus.

12 So if that's all you have to do, then what's the
13 point of the Postal case basically saying reverse veil
14 piercing? I mean, you're swallowing the exception with the
15 rule. And I would say, your Honor, that it keeps getting
16 pointed out by people that this Postal Instant Press case is
17 out there as if that's the only case that rules in our favor
18 under California law. Judge, there are five cases that say
19 that California law does not recognize reverse veil
20 piercing.

21 THE COURT: What about the older cases that were
22 cited in the tentative, including the only Supreme Court
23 case that I believe has addressed it, which is Woods?

24 MR. MEDLER: Yeah.

25 THE COURT: And you can get to that in a moment.

1 I disagree with you in terms of the nominee theory. It's
2 not just the exception swallowing the rule. There's a six-
3 factor test that the Ninth Circuit set forth in Fourth
4 Investors. And the Court went through how it believed that
5 there is at least a viable theory under the Fourth Investor
6 test.

7 And again, the Court does disagree. As you say,
8 reasonable minds can disagree --

9 MR. MEDLER: Right.

10 THE COURT: -- in terms of whether or not that
11 nominee theory is only focused on tax-related claims.

12 MR. MEDLER: I'd like to address the point you
13 made a moment ago about some of the older cases in
14 California.

15 THE COURT: Certainly.

16 MR. MEDLER: The first one was Taylor. And if you
17 look at the Postal Instant Press case, they actually cover
18 Taylor in that opinion.

19 THE COURT: Uh-huh.

20 MR. MEDLER: You probably read that. And they
21 nevertheless believed that this was a case of first
22 impression, when Postal Instant Press was decided.

23 So they were of the opinion that Taylor was
24 certainly not -- decided in 1957, was certainly not
25 persuasive enough for them to rule that way. I will point

1 out also that there is nothing in that previous Taylor case
2 which suggested that there were other legitimate unsecured
3 creditors of the corporation waiting in the wings to be paid
4 who had to stand behind in line for the creditors of the
5 individual shareholder. So I think that makes that
6 different.

7 With regard to the Supreme Court case from 1977,
8 your Honor, that was a case involving trusts. And I just
9 don't think that that is very close to the facts here. In
10 that case, they were saying that the trust was the alter ego
11 of the shareholder -- of the individual person who was, I
12 guess, a member of the trust or whatever. I just don't
13 think those facts are the same. And we don't have the same
14 situation here where we have creditors of the trust lurking
15 out there that have to wait in line behind this.

16 And I just think that it's just a matter of
17 overall fairness, Judge. This is a gentleman, Mr. Francis,
18 who I think we can all agree is a walking time bomb, who
19 goes around committing torts right and left. For the
20 legitimate creditors of the corporation to have to wait in
21 line behind the preferences given to someone who is not a
22 legitimate corporate creditor, who is someone who is a
23 creditor of torts that are committed by Joe Francis that
24 have absolutely nothing to do with the corporation, we
25 believe is just fundamentally unfair, your Honor.

1 THE COURT: Let me ask you a question. Because I
2 assume Mr. Pagay would take issue with you calling Mr. Wynn
3 or Wynn Las Vegas not a legitimate creditor and Ms. Favazza
4 a legitimate creditor. So I think the Court pointed out in
5 the tentative ruling, everybody is trying to hold the
6 Debtors responsible for Mr. Francis's claims or wrongs or
7 whatever it is, based upon some type of vicarious liability.

8 You're saying it's a mere name change. The
9 Trustee takes issue with that. And Mr. Pagay and Mr. Wynn
10 are trying to hold the Debtor liable for, you know, wrongs
11 committed by Mr. Francis. So I think everybody, legitimate,
12 illegitimate, not legitimate, however you want to call it, I
13 think you're all standing in the same position. You all
14 have judgments against Mr. Francis.

15 MR. MEDLER: No, that's not true.

16 THE COURT: Oh, I'm sorry. You have it against
17 Mantra and MRA.

18 MR. MEDLER: Right.

19 THE COURT: Okay. And Mr. Pagay is against
20 Francis, and the class action creditors, I believe, are
21 against --

22 MR. MEDLER: Mantra.

23 THE COURT: -- Mantra.

24 MS. DE BARTOLOMEO: Actually, excuse me. Just --
25 not to interrupt.

1 THE COURT: That's fine.

2 MS. DE BARTOLOMEO: They're against all three.

3 I'm sort of a hybrid.

4 THE COURT: Okay. Against Mantra, MRA and
5 Francis.

6 MS. DE BARTOLOMEO: Francis, Mantra, MRA.

7 THE COURT: Okay.

8 MR. MEDLER: Okay.

9 THE COURT: But everybody has them against someone
10 other than the Debtors. Okay.

11 MR. MEDLER: I would -- sure. Go ahead. Sorry.

12 THE COURT: I hear your argument that you say it's
13 a mere name change. That's all. There's no big deal. The
14 Trustee takes issue with that. I think the Trustee's
15 arguments have weight in terms of that.

16 That being said, we're looking at your judgment.
17 If you look at the paper that your judgment is on, it's not
18 against the Debtors. Nobody's judgment is against the
19 Debtors at this point. So everybody is trying to get money
20 from the Debtors, and nobody actually has a judgment that
21 says it's against GGW Marketing or Direct or whatever the
22 others are.

23 So the distinction between legitimate and not
24 legitimate, I really don't see it quite the same way you do.

25 MR. MEDLER: And I know obviously we disagree on

1 it, but let me just make the quick point that there is not a
2 body of law in California that says my type of claim is
3 illegitimate. The successor liability is very firmly
4 established in California law. And even if it's not
5 successor liability, we can have traditional piercing of the
6 corporate veil, which is clearly allowed in California.

7 So I think it's different because there's not a
8 body of law out there that says this is bogus, this is an
9 illegitimate, invalid claim. And that's why I think the two
10 are dissimilar. I would agree -- and by the way, let me
11 just make another point that I don't know is -- I think it
12 should probably be made.

13 We agree that he's the alter ego. We don't have
14 any debate with that, that Joe Francis is the alter ego of
15 the Debtors, is the alter ego of Mantra. No question about
16 that. And in a traditional veil piecing analysis, that
17 would be the end of the inquiry. Because once he's the
18 alter ego, you get to pierce.

19 But in the reverse veil piercing, you have to go
20 the second step of having a body of law which says you can
21 reverse veil-pierce. And that's where we disagree with
22 them, and we believe that there is not a legitimate claim.

23 So we believe, your Honor, that this settlement is
24 fundamentally unfair, will dramatically dilute my client's
25 share of what will be the ultimate recover in this case.

1 And so we'd ask that you reverse your position in your
2 tentative.

3 And as a last point, if the Court were to go with
4 the tentative, we would ask for the ability to be able to
5 appeal, so we'd like your Honor to stay her ruling and give
6 us the opportunity to appeal the case -- appeal the ruling.

7 THE COURT: Thank you.

8 MR. MEDLER: Thank you, your Honor. I appreciate
9 your time.

10 THE COURT: Thank you.

11 Wh don't we go with Mr. Kolodzi.

12 MR. KOLODZI: Thank you, your Honor.

13 Your Honor, we reviewed the 24-page tentative,
14 respectfully disagree. Just to keep it short, honestly, in
15 order to avoid being duplicative, we've asserted our
16 positions, our arguments, our authorities. We agree with
17 counsel's positions on the reverse veil piercing and choice
18 of law doctrines.

19 I would only ask that if you do take the tentative
20 to be your final ruling, that we would also request a stay
21 pending appeal. Thank you.

22 THE COURT: Thank you.

23 Ms. De Bartolomeo. Did I do that right?

24 MS. DE BARTOLOMEO: No, your Honor, you didn't,
25 but it's fine. I'm pretty much used to it.

1 Just to digress for a minute, do you know anything
2 about professional football and the Forty-Niners?

3 THE COURT: I do not.

4 MS. DE BARTOLOMEO: Okay. Well, usually that's my
5 question, because the former owner of the Forty-Niners is a
6 gentleman named Eddie De Bartolo. And I have three extra
7 letters to him. So my father always says, that's the poorer
8 side of the family.

9 Your Honor, just for a little bit of background.
10 I know that your Honor has read all the papers here. Who I
11 am, I represent class action creditors. And people might be
12 wondering who the heck are they, and what are they doing
13 here. We litigated a case against Mantra, MRA and Joe
14 Francis starting in, I think, 2005 or 2004. I can't even
15 remember, it's been so long.

16 The case -- we certified a nationwide class under
17 California law. It went up on appeal, and it was confirmed.
18 Essentially, the litigation was like every other piece of
19 litigation with Mr. Francis and his companies, which is
20 just, you know, a circus. But we won at every level. The
21 case was finally settled, was granted preliminary approval.
22 Notice went out.

23 And that was sort of the beginning of the tricks
24 and tribulations of the Joe Francis show. Because
25 essentially, even though there was a court order, they

1 refused to pay for things like notice, claims administration
2 and the whatnot. So I had the luxury of basically getting
3 writs and liening bank accounts going back just to pay for
4 the settlement, essentially, which is what my claim is.
5 It's for the remainder of that judgment from September of
6 2009, which they changed banks, and we seized a couple of
7 cars, and we sold them and settled that.

8 But as Mr. Wynn's counsel I'm sure has
9 experienced, it's like chasing -- that game on the street
10 where something is always under a different shell. And in
11 this case, it just became a different company or an offshore
12 trust account or something like that. So you're in for a
13 good experience, I think, with this bankruptcy.

14 But back to my point. Just to add on something
15 that esteemed counsel here has mentioned. California does
16 have a further interest in that other creditors like my
17 client are a California judgment brought under California
18 laws before the California Superior Court. And we do have a
19 right to have that judgment be treated fairly in the
20 Bankruptcy Court where we find ourselves now.

21 What I'd like to simply ask the Court is to -- I
22 agree with everything that both counsel to my right have
23 said regarding the reverse veil piercing and to respectfully
24 request that the Court maybe take a second look at some of
25 the cases that have been discussed and the law that applies.

1 I'd also like to ask the Court to reconsider its
2 tentative rule as to the section regarding the allowance of
3 the \$250,000 priority administrative claim. I have trouble
4 with that one because it appears that the allowance runs
5 contrary to or basically even negates the \$400,000
6 subordination that one section of the settlement
7 agreement -- in one breath, they say we're going to
8 subordinate 400,000, and in the next breath -- which means
9 we'll go to the back of the line and we'll let the other
10 creditors move forward, and then we're going to take a
11 \$250,000 priority administrative claim, and that puts you to
12 the front of the line.

13 And I'm just a little unclear as to how that could
14 possibly fair -- be fair to the other unsecured creditors.
15 And quite frankly, as I explained from over there, my
16 judgment is against Mr. Francis and then the predecessor
17 companies of the GGW entities that are before you in
18 bankruptcy, Mantra and MRA.

19 So I'm kind of a hybrid, but I'm not
20 necessarily -- I don't agree with the reverse veil piercing
21 point. But I do tend to think that all of the creditors out
22 there -- even if I'm in the same position as Mr. Wynn with a
23 judgment against Mr. Francis, why wouldn't I get a priority
24 claim administrative claim?

25 And I understand that in the paper, the movants

1 are arguing that that has to do with the fact that there was
2 a settlement reached as to the trust money that was in with
3 a Nevada lawyer, Mr. -- I believe it's Mr. Francis's
4 criminal lawyer, although I've seen on occasion in civil
5 court with our case.

6 And I realize that there was a tracking of funds,
7 and it was from the Debtors. It was a certain amount, and
8 that's being put back into the estate. And I applaud them
9 for that because we would welcome money into the estate
10 because there are going to be plenty of creditors showing up
11 to file claims for this. However, I just don't get the
12 \$250,000 administrative claim and that priority and would
13 ask the Court to reconsider that.

14 The other section of my argument that I would ask
15 the Court to take another look at is the point of the bar
16 date. And I realize that there isn't any law out there that
17 says thou must wait until the bar date in order to settle
18 cases. I don't think that's my point.

19 It may not have been articulated that well in the
20 papers, but simply stated, I don't really see a couple of
21 TMZ reports in some minor newspapers saying that "Girls Gone
22 Wild" is going bankrupt and Joe Francis's company. I mean,
23 as we know, there is "Girls Gone Wild" events and brands and
24 magazine and you name it. "Girls Gone Wild" fill in the
25 blank. It's not necessarily that other creditors out there

1 are going to know, oh, that's my company. They went
2 bankruptcy. Or they know Joe Francis, but they may not
3 connect it.

4 So I don't necessarily think it would be fair to
5 allow Mr. Wynn that \$250,000 priority claim when there may
6 be other creditors out there that are even more worthy of a
7 priority claim, but they're just not before this Court yet.

8 So I would respectfully ask the Court to delay
9 that decision on the priority claim until after the bar
10 date, when you have a complete record before you and you can
11 see what creditors have shown up. Because they do know
12 about it, and they have appeared.

13 Thank you for your time, your Honor.

14 THE COURT: Thank you.

15 Mr. Pagay.

16 Mr. Heyn, you'll get a chance too.

17 MR. PAGAY: I don't want to steal Mr. Heyn's
18 thunder. I'll be very, very brief, your Honor. I'm not
19 going to add much to the tentative. Obviously, it was very
20 well thought out and thoroughly analyzed.

21 I think the interest of the objecting parties
22 belies really their positions to aspire to be creditors of
23 these estates. And if they're successful, they obviously
24 have an interest. They've been arguing all morning that
25 there be as few other claims to share with them as possible.

1 And I understand that interest.

2 The other objecting party appears to be the latest
3 incarnation of Joe Francis. And obviously, the interest
4 there in opposing this settlement is that that party wants
5 the estate, the Trustee, Mr. Neilson, to have as few
6 resources as possible in the immediate sense to chase after
7 Francis and whatever entity Mr. Francis may be using. But
8 at the end of the day, it's Mr. Neilson's business judgment
9 that should be given deference by this Court.

10 I think with respect to the three remaining
11 relevant A&C factors -- because, as the Court noted, one of
12 them doesn't have any bearing here -- difficulties of
13 collection is not at issue. I think the fact that there is
14 so much uncertainty and so much argument over the merits of
15 the law, which law to be applied, it lends itself to the
16 conclusion that there is an issue with success in the
17 litigation. So it's obviously a factor to be weighed. And
18 any time two parties settle any litigation, that uncertainty
19 weighs in favor of settlement.

20 Mr. Medler admitted Factor Number 2. He said,
21 quote, these issues are so complicated, he said. And so he
22 concedes the second factor that this is complex litigation.
23 And obviously, as the Trustee has noted in papers, expense,
24 inconvenience and delay is inevitable. These parties
25 obviously are going to look to appeal this.

1 Obviously, these issues are going to be hard
2 fought, regardless. But I think two out of three of the A&C
3 factors are already there.

4 The paramount interest of creditors, of course,
5 your Honor, is the Trustee's number one concern. And the
6 Trustee has an interest in resolving issues. The Trustee
7 may be before the Court shortly with settlements with each
8 of these creditors as they try to look to this estate for
9 recovery on account of their claims, which are against
10 nondebtor entities as well.

11 Obviously, Wynn believes it will prevail. The
12 terms of the settlement are not to be sort of cherry-picked
13 by any court. They are the result of thorough arm's length
14 negotiations and extensive ones that have taken several
15 months.

16 As we all know, the Trustee has researched this
17 thoroughly. As Mr. Medler points out, they have done a
18 tremendous amount in researching the estates, the claims
19 against it and the interests of the various parties.

20 So I think there's no argument whatsoever that
21 this was a rush to allow Wynn claims. Obviously, as we
22 pointed out in our papers, Wynn believes it's entitled to
23 all this money. Wynn believes that the 1.8 is entirely
24 Wynn's. We have multiple liens every which way but Tuesday
25 to get after that 1.8.

1 So this is an integrated global settlement. The
2 Trustee's business judgment is to be respected. Some of the
3 counsel have -- it can't be cherry-picked apart as, we like
4 this, but we don't like that. And so we would urge that the
5 Court's tentative become the ruling today, your Honor.
6 Thank you.

7 THE COURT: Thank you.

8 Mr. Heyn.

9 MR. HEYN: There is very little left after what's
10 been said and what's been written, so I will be brief.

11 First I want to reiterate what Mr. Pagay said. He
12 said this is an integrated settlement and that we have dealt
13 with the two parts of the settlement, the return of the
14 funds and the allowance of claims as two equally fair parts
15 of this deal. It should not mask the fact that we don't get
16 the money -- or if we don't allow the claims. We don't
17 allow the claims if we don't get the money.

18 We're settling claims with Mr. Wynn. And we --
19 and as part of that settlement is a \$250,000 priority claim.
20 I think that it's appropriate for your Honor to address this
21 at this point. I think that creditors have now at this
22 point been given notice. I think that from the outset of
23 this case, it's not been just in TMZ, but in national
24 publications that have made creditors aware that the "Girls
25 Gone Wild" is in bankruptcy.

1 You know, your Honor has noted that are a lot of
2 other creditors. Mostly it's just creditors that, like
3 Wynn, wish to hold the Debtor vicariously liable. And the
4 Trustee has to balance the interests of protecting the
5 estate with the expense of -- and the prospect of ending
6 this litigation.

7 And the Trustee just cannot engage in a 20-front
8 war with every creditor that ever asserts that the "Girls
9 Gone Wild" should be liable for Joe Francis or his companies
10 or his previous companies. We have to do what's reasonable.

11 So the Trustee spent a lot of time, as the
12 briefing reflects, looking at these issues very carefully.
13 It's difficult to talk about the weaknesses of the estate's
14 position because the litigator in me wants to fight
15 everything. I want to defend the estate against Wynn. I
16 want to defend the estate against Favazza and the judgment
17 creditors.

18 But there are extraordinary weaknesses in the
19 case, not the least of which is that Wynn has already had a
20 court that's found that it is substantially likely to
21 prevail. Not the least of which is that Mr. -- that other
22 creditors have similarly had success against Mr. Francis and
23 his entities.

24 Against these realities, the Trustee had to make a
25 very tough decision, and he endeavored to do so with a great

1 deal of diligence. He did do a great deal of diligence.
2 And as much as Mrs. Favazza -- or sorry -- Ms. Favazza and
3 the judgment creditors want to make this a trial about
4 whether reverse piercing is appropriate here, your Honor
5 doesn't need to make a finding about the correct state --
6 the correct law. Your Honor doesn't even need to make a
7 correct finding about whether reverse piercing would be
8 allowed under any state's law.

9 All your Honor needs to do is determine that there
10 is no slam dunk here, that it is a very complicated issue,
11 and that the Trustee, one, negotiated in good faith, and
12 two, that the settlement is fair and equitable in light of
13 all the circumstances.

14 Favazza and the judgment creditors believe that
15 California has an interest in making sure that their claims
16 are not diluted by Wynn, but that California has no interest
17 in protecting Wynn from similar wrongdoing by Francis. It's
18 utterly perplexing to me.

19 Wynn -- Mr. Wynn himself has a California
20 judgment. And I think that California law is very clear
21 that formalities are disregarded in favor of creditors that
22 have been hurt. So it's very difficult for us to argue
23 against that. And the prospects are not great.

24 These are complicated proceedings, and the Trustee
25 wants to do right by all creditors. And we understand that

1 the creditors are faced with a very large claim by Wynn.
2 They want the Trustee to throw -- to throw the end zone
3 pass, the hail Mary to try and keep Wynn out of this case
4 and keep it for a much larger recovery for them. And we
5 understand that. But that's not the Trustee's job. The
6 Trustee's job is not to take extraordinary risk. And so we
7 would request that your Honor grant the 9019 motion.

8 As to the stay issue, we would resist the stay. I
9 think your Honor is well aware that the settlement agreement
10 potentially blows up unless approved by final order by the
11 end of this month. We have obtained a hearing date in
12 Nevada so that we can get that final approval.

13 If this Court's ruling is stayed, I can't tell you
14 that the settlement agreement will remain in place. So
15 there would be extraordinary prejudice to the estate. And
16 so we would request that the stay be denied or that the
17 party seeking the stay be -- put up an appropriate bond.
18 Thank you, your Honor.

19 THE COURT: Thank you.

20 I'm going to take a brief recess for about 10
21 minutes. I want to review a few issues. So we'll
22 reconvene -- it's now about 20 of 11:00. We'll reconvene at
23 10 of 11:00. Thank you. Off the record.

24 (Proceedings recessed briefly.)

25 THE COURT: Thank you. Please be seated. Good

1 morning again.

2 I've considered the argument of all sides. And I
3 think it's important to remember the reason that we're here.
4 And we're here on the 9019 motion regarding approval of the
5 settlement. In terms of the legal standard to approve
6 settlement, a court has great latitude in approving a
7 settlement. That's Woodson vs. Fireman's Fund Insurance
8 Company, 839 F.2d 610, Ninth Circuit, 1988.

9 The standard that I believe all parties cited was
10 the In Re A&C Properties, 784 F.2d 1377, Ninth Circuit, 1986
11 standard, which states that a Bankruptcy Court should
12 approve a settlement if it was the result of, quote, good-
13 faith negotiation and is, quote, fair and equitable.

14 When making this determination, there's a four-
15 part test: The probability of success on the litigation;
16 the difficulties, if any, to be encountered in the matter of
17 collection; the complexity of the litigation involved and
18 the expense, inconvenience and delay necessarily attending
19 it; and finally, the paramount interests of the creditors in
20 proper deference to their reasonable views in the premises.

21 The Trustee has the burden of demonstrating that
22 the compromise is fair and equitable and should be approved.
23 It's also important to note, although the Court should
24 consider reasonable view of creditor's objections, do not
25 rule. That's a quote. It is well established that

1 compromises are favored in bankruptcy. That's In Re Leeway
2 Holding Company (phonetic), 120 B.R. 881, Bankruptcy
3 Southern District of Ohio, 1990.

4 In terms of the four factors, as all parties
5 recognize the second one, the difficulties in collection is
6 not relevant to the facts before the Court.

7 In terms of the probability of success in the
8 litigation and the complexity of the litigation involved,
9 all parties, regardless of whether they acknowledge it or
10 not, appear to recognize that the litigation is very
11 complex. There are complex choice of law issues. There's
12 complex issues in terms of whether or not reverse veil
13 piercing will be allowed and/or whether or not nominee
14 theory is appropriate.

15 In terms of the probability of success of the
16 litigation, the Trustee has engaged in extensive analysis
17 and has provided a very well reasoned basis why there are
18 questions regarding whether or not the Trustee would prevail
19 in the litigation, either under a reverse veil piecing
20 argument or a nominee theory argument.

21 As the Court noted, the Court didn't really think
22 that the choice of law issue or which state's law would
23 apply was really the dispositive issue. Because based upon
24 the Court's analysis, the -- Mr. Wynn or Wynn Las Vegas, I
25 guess it is, had a viable legal theory under California law,

1 under Nevada law and under Delaware law.

2 So to the Court, the choice of law analysis fell
3 away because there was a viable legal theory for Wynn Las
4 Vegas to assert under any of those three jurisdictions laws.

5 In terms of the arguments the paramount views of
6 the creditors -- and I did consider and spent a significant
7 amount of time considering the arguments of Ms. Favazza, of
8 the class action creditors. I did also consider GGW
9 Global's arguments. However, GGW Global obviously is not a
10 creditor. They claim to be the successor to one of the GGW
11 entities.

12 But that being said, in terms of the interests of
13 the creditors, Wynn Las Vegas's claim and Mr. Wynn's claim
14 are the largest claims if the settlement is approved. If
15 the settlement isn't approved and if the Trustee were to
16 continue to litigate those claims and were to lose, which
17 there is a significant probability that that might occur,
18 not only would Wynn Las Vegas and Wynn's claims be allows in
19 their full amounts, but there would be significant
20 additional expenses incurred in continuing to litigate those
21 issues.

22 So although I understand and can sympathize with
23 the arguments of Ms. Favazza as well as the class action
24 creditors, I do believe that the paramount interests of all
25 creditors in this situation is to approve the settlement.

1 So as stated in the Court's tentative, I am
2 approving the settlement in its entirety. One final -- one
3 final issue regarding the division of the funds and the
4 trust fund, the \$1.8 million. I believe that Wynn Las Vegas
5 has demonstrated that they have a right to the entirety of
6 those trust funds.

7 So in terms of the Debtors receiving the \$800,000
8 and Wynn Las Vegas getting about a million, I think that's
9 definitely fair in terms of the \$250,000 administrative
10 claim. I think it's a fair division, given the strength of
11 Wynn Las Vegas's evidence substantiating that they have an
12 interest in all of those funds.

13 So based upon the statements in the tentative
14 ruling as well as the statements just made by the Court, I
15 am granting the Trustee's motion to approve the settlement.

16 Now let's talk about the motion for stay pending
17 appeal. I'm normally not inclined to rule on oral motions.
18 However, I know we're under significant time deadlines at
19 this point. So I would like to have argument on that.

20 Mr. Medler, you're the first person to address it.
21 There's a four-part standard under the Supreme Court's
22 decision -- I don't know if I'm saying it correctly -- Nken,
23 N-K-E-N, vs. Holder, 129 Supreme Court 1749, 2009 case.
24 It's whether the stay applicant has made a strong showing
25 that you are likely to succeed on the merits, whether the

1 applicant will be irreparably injured absent a stay, whether
2 the issuance of the stay will substantially injure the other
3 parties interested in the proceeding, and where the public
4 interest lies.

5 MR. MEDLER: Yes, your Honor. As far as the
6 reasonable likelihood of success on the merits, I don't
7 think we need to rehash that. Obviously, you know our
8 position on that is that we believe that we have a
9 substantial likelihood of prevailing on this matter on
10 appeal because we believe that it is important to analyze
11 the choice of law because we believe that California law
12 clearly rejects reverse veil piecing.

13 And even if Nevada substantive law were to apply,
14 the case law is not completely clear in Nevada on reverse
15 veil piercing. And in that case, you have to consider the
16 interests of the other creditors involved. And in this
17 scenario here where the legitimate corporate creditors are
18 being put to the back of the line of Wynn, it is essentially
19 grossly unfair. And there is the Flamingo case of course we
20 mentioned. I know it's an unpublished decision, but I
21 believe that supports our position here.

22 With regard to the second issue about whether
23 there is irreparable harm, if the Court approves this, the
24 money will be distributed. And who knows where it will go.
25 It will go to Wynn, and we have to just rely on Wynn to say,

1 oh, if things go differently, you're going to pay it back.

2 As far as the second piece of this, I -- you
3 know -- sorry.

4 THE COURT: Let me ask you a question. When you
5 say the money is going to be distributed to Wynn --

6 MR. MEDLER: Right.

7 THE COURT: -- 27 million, the estate doesn't have
8 anything near that.

9 MR. MEDLER: Correct.

10 THE COURT: The 1 million --

11 MR. MEDLER: Yes.

12 THE COURT: -- from the trust fund will be.

13 MR. MEDLER: That's what I was referring to, yes.

14 THE COURT: Okay. And if there were an issue, of
15 all people, I believe Wynn and Wynn Las Vegas probably does
16 have the ability to pay that money back.

17 MR. MEDLER: Probably true.

18 THE COURT: Okay.

19 MR. MEDLER: And I would say that probably the
20 fight over the IP battle is going to take a number of
21 months, and by the time we finally get the case, you know,
22 on the auction block, it's probably going to be -- I don't
23 know -- next year sometime, I would think. I don't know how
24 long an appeal takes here, so -- but I -- if the Court were
25 of the opinion that, by going forward with the appeal, that

1 the money that was obtained in an auction of the company
2 would then go to them before we had an opportunity to appeal
3 them, there would be irreparable harm.

4 I'm not sure what the time deadlines you have here
5 in this jurisdiction, so if I can address that.

6 THE COURT: I'm not sure -- I didn't understand
7 that argument in terms of if the company were -- please
8 explain that again.

9 MR. MEDLER: Yeah. So what would happen is -- the
10 question is, what's going to happen first, the court that's
11 ruling on this issue on appeal rendering their decision,
12 number one, or number two, there being a distribution of
13 that 27 million or whatever it is, whatever money that is
14 obtained on the auction of this company to Wynn. And I
15 don't know which of those would happen first.

16 But in the event that -- so it's just -- that
17 depends on whatever your time deadlines here for appeals,
18 how long that takes and how long it's going to take us to
19 wind this up. So I don't really -- I probably can't speak
20 to that because I don't know what the amount of months that
21 would be.

22 THE COURT: Right. Right.

23 MR. MEDLER: The public interest, I think to --
24 when you look at the public interest, it's some of the
25 issues we talked about before about, you know, the other

1 creditors that are involved in this case that have to just
2 go to the back of the line for this \$250,000 priority claim.
3 I think that's a public interest.

4 I think that the public interest of the employees
5 of this company is an issue. And to the extent that this
6 Wynn claim will basically, you know, end up making it so the
7 company can't ultimately pay its debts could be an issue.

8 And the third factor I think you mentioned -- what
9 was the third factor?

10 THE COURT: Sure. The first one is whether the
11 stay applicant has made a strong showing of likely success
12 on the merits. Second is whether the application --
13 applicant will be irreparably injured. Third, whether the
14 issuance of the stay will substantially injure the other
15 parties interested in the proceeding. And four is public
16 interest.

17 MR. MEDLER: Right. So that kind of -- the third
18 factor kind of goes along with what we talked about before,
19 which is that, you know -- you made the point that, you
20 know, if the money goes to Wynn, you know, I guess there
21 would be concern that it could never come back. But I guess
22 you're probably correct that Wynn probably has enough money
23 to pay it back if that happened. And then it sort of
24 depends on the time line of which happens first.

25 THE COURT: Right.

1 MR. MEDLER: So, you know --

2 THE COURT: In terms of appeals, I guess it would
3 depend upon where you appeal to. The District Court, that's
4 anybody's guess. The BAP, nine months to a year is what
5 I've seen in terms of the time period it takes to get
6 through the process.

7 MR. MEDLER: I haven't spoken with A.J., but my
8 thought is to go to the District Court. I don't know what
9 your thoughts are, but that's what we would probably do.

10 THE COURT: And that just depends upon the
11 District Court judge that gets assigned the case.

12 MR. MEDLER: Yeah.

13 THE COURT: Okay.

14 MR. MEDLER: Okay. Thank you, your Honor.

15 THE COURT: Thank you.

16 Mr. Kolodzi.

17 MR. KOLODZI: Just briefly, your Honor. Actually,
18 very briefly.

19 I join in counsel's arguments as to the issuance
20 of a stay. Irreparable injury is minuscule compared to the
21 irreparable harm to my client, to counsel's clients as well
22 as to any of the judgment creditors.

23 Public interest -- and again, we're just asking
24 for a stay. I know the time lines -- the time period in
25 which the Appellate Court or District Court would rule on

1 that matter might be an issue, but again, in the broad
2 scheme of things, it's not very -- it's not a lot, to be
3 honest with you.

4 THE COURT: Let me ask you a question.

5 MR. KOLODZI: Yes, your Honor.

6 THE COURT: How will your client be irreparably
7 injured?

8 MR. KOLODZI: Well, your Honor, ours is an
9 interesting situation. Again, we're an interested party.
10 As you referenced in your tentative ruling, we filed a
11 motion to dismiss the bankruptcy of GGW Marketing, LLC.

12 THE COURT: Right.

13 MR. KOLODZI: I don't have to rehash it, but the
14 reason why was because we were not given consent. My
15 client, GGW -- Global Brands, Inc. is a sole member of the
16 Marketing, LLC brand. The stay, in my opinion, would allow
17 us to kind of filter that position out as well, that
18 argument which I believe is going to be heard later this
19 month, if not September 5th or something. I have to check
20 my calendar. I apologize.

21 THE COURT: I think that's been continued to
22 October 22nd.

23 MR. KOLODZI: October -- you're right. It was
24 originally scheduled December 5th. Thank you.

25 Either way, a stay in this situation, again, for

1 the reasons enunciated by counsel, would allow that issue as
2 to the motion to dismiss the Marketing, LLC brands also to
3 be filtered out and adjudicated as well.

4 Again, the irreparable harm to our client and also
5 to the other judgment creditors and interested parties is
6 minuscule, de minimis to any kind of benefit that they would
7 receive. And again, it's just a stay. Who knows how the
8 Appellate Court, District Court is going to rule, besides
9 for some more time to filter these things out.

10 THE COURT: What about the argument that the
11 settlement agreement is only good through the end of August,
12 I believe. So the irreparable injury, I would think, is
13 pretty high on the other parties.

14 MR. KOLODZI: Good point, your Honor. I mean,
15 again, our arguments again, as proffered into the opposition
16 papers of the settlement agreement itself was unreasonable
17 and unfair and inequitable. We would have an issue with
18 that. We'd have to raise that issue and litigate it. But
19 that's a good point. I really have no answer to that.

20 THE COURT: Okay.

21 MR. KOLODZI: Thank you.

22 THE COURT: Thank you.

23 And I won't even try to say your name, but please
24 come to the podium.

25 MS. DE BARTOLOMEO: It's De Bartolomeo. I would

1 just agree with counsel in terms of their points. I think
2 the point that I made earlier in terms of irreparable harm,
3 I'm still -- you know, I'm still fighting that battle for
4 wait until the bar date.

5 And I understand that the settlement agreement has
6 sort of a blow-up term by August 30th. I'm unclear as to
7 why that can't be extended, but I'm sure that someone who
8 studied more of the papers or the detail behind it will
9 explain it to us.

10 So my view would simply be, I'd rather the Court
11 have a complete record and all of the proper creditors
12 before her. Thank you.

13 THE COURT: Thank you.

14 MR. PAGAY: Good morning again, your Honor.

15 THE COURT: Good morning.

16 MR. PAGAY: With respect to the factors I believe
17 in the Nken case, the first one, strong showing of
18 likelihood of success on the merits, I don't want to confuse
19 what that success is and what -- the merits that the Court
20 should be looking at.

21 This is not about the merits of the underlying
22 litigation. This is not about arguing over choice of law.
23 It's not about arguing over the underlying issues in the
24 litigation. That litigation is not before this Court. The
25 Trustee's motion is.

1 And if we look upon the merits of the Trustee's
2 motion and what the Ninth Circuit tells this Court what and
3 how it should rule, looking to the Court's tentative, the
4 Court sites Burton vs. Allrich (phonetic). The Court need
5 not rule upon disputed facts and questions of law, but only
6 canvas the issues.

7 This Court has done far more than that and has
8 overwhelmingly exceeded what a court needs to do to fairly
9 consider a settlement brought before it by a trustee or a
10 debtor in possession. So this Court has overwhelmingly met
11 its requirement in that regard.

12 The standards for a settlement also require that a
13 court should not substitute its judgment for that of a
14 trustee. The Trustee is the steward of these estates, and
15 the judgment, based certainly on the thorough analysis of
16 Mr. Neilson, is not supposed to be arbitrarily displaced by
17 a court in considering a settlement.

18 And again, as mentioned in the tentative, the
19 Court is to evaluate whether or not it's fair and equitable
20 and it falls below the lowest point of reasonableness.
21 Overwhelmingly, with the analysis done here, this is a
22 reasonable, fair and equitable settlement.

23 So as to the merits of the motion, not the
24 underlying litigation that counsel seeks to argue before
25 this Court, it is overwhelming that this motion will succeed

1 on its merits even on -- and there's no likelihood of
2 success on appeal on their part, and a strong showing
3 certainly on the Trustee's part that the Trustee would
4 prevail in getting this motion upheld on appeal.

5 With respect to irreparable injury to the
6 appellant absent a stay, the Court has already noted -- and
7 we were a little jocular earlier -- the money is not going
8 anywhere. There's no evidence before this Court that there
9 is a likelihood that the trust funds that are to be
10 distributed as part of the settlement are going to go
11 anywhere with respect to Wynn.

12 As the Court noted also, claims are not being paid
13 anytime soon. So there's not a matter of the assets, the
14 subject of the settlement disappearing anytime quickly. So
15 there's -- there should be no irreparable injury to any of
16 these prospective claimants in this case. They don't really
17 have allowed claims in this case as of yet, given that their
18 creditor is really of ancillary -- and people just like Wynn
19 Las Vegas is.

20 No substantial harm to the appellees. The Court
21 has noted the settlement expires on August the 30th. We
22 have a hearing already before the Nevada Bankruptcy Court
23 prior to that date so that the settlement can be
24 consummated. And that is a hard deadline.

25 And lastly, your Honor, the fourth element that

1 the Court should consider in ruling on the motion for stay
2 pending appeal is the public interest. I think the Court
3 already noted earlier today, compromises are favored in
4 bankruptcy. Overwhelming public interest in making sure
5 that bankruptcy cases are administered quickly, are
6 administered expeditiously. And a trustee in bankruptcy is
7 tasked with that role.

8 And so a trustee should be able to, as Mr. Heyn
9 has pointed out earlier, not fight 1,000 battles, but
10 carefully analyze the issues, fight the battles that he
11 must, and otherwise find settlements and compromises which
12 are favored in the bankruptcy context. Thank you, your
13 Honor.

14 THE COURT: Thank you.

15 Mr. Heyn.

16 MR. HEYN: I have very little to add.

17 On the four factors, I would note that the burden
18 is on the party seeking the stay to make a showing of strong
19 probability of success on the merits. The strong
20 probability of success is a factor met here, both because
21 your Honor decided the motion correctly and because, on
22 appeal, your Honor's decision is reviewed with extraordinary
23 deference. I think the case for that is Woodson. Yeah. On
24 Woodson -- the Woodson court said that your Honor's decision
25 would be given a great deal of latitude. And I find it very

1 unlikely that the appeal will be successful.

2 As far as irreparable injury, they have not shown
3 that either. They postulate that maybe, you know, Wynn is
4 going to -- Wynn L.V. is going to do something with the
5 money, though they've just admitted that Wynn has the
6 wherewithal to return the money.

7 They postulate that, well, maybe this estate will
8 be wrapped up and the money will be distributed. That's --
9 but there's no showing on that. They have to make the
10 showing. They haven't made it.

11 As far as harm to others, they haven't shown that
12 there will not be harm to the Trustee or -- well, candidly
13 to the estate by issuing a stay. And the harm here is
14 palpable and is that the settlement blows up on August 30.

15 There's been some suggestion that there's no
16 reason that that can't be continued, and the settlement
17 agreement does provide that Wynn L.V. and the Trustee may
18 agree to continue the date, though I can tell you that from
19 our discussions with Wynn L.V., they're antsy to get back on
20 collecting the debt, and they want their Nevada action going
21 forward as soon as possible.

22 You know, candidly, it was part of our leverage in
23 getting the deal that we got, was to hold that out for them
24 and say, well, you know, you will be able to go forward
25 against -- in your alter ego case if you settle with us.

1 Finally, the public interest, as Mr. Pagay has
2 aptly noted, is against issuing a stay in this case because
3 settlements are so favored. Because settlement in this case
4 is absolutely necessary. We can't go through this process
5 for every claim against the estate, your Honor. Just -- we
6 can't do it. There's just not the money.

7 So for those reasons, we would request that your
8 Honor deny the stay.

9 THE COURT: Okay. In terms of stays pending
10 appeal, the Supreme Court in Nken vs. Holder, 129 Supreme
11 Court 1749, 2009, stated that the Court has discretion in
12 determining whether to issue a stay pending appeal. A stay
13 should be sparingly employed and reserved for the
14 exceptional circumstance. A stay is not a matter of right,
15 even if irreparable injury might otherwise result. And the
16 party requesting a stay bears the burden of proof.

17 As I mentioned previously, the Supreme Court
18 stated four factors that courts must consider when
19 determining whether to issue a stay pending appeal. One,
20 whether the stay applicant has made a strong showing that he
21 or she or it is likely to succeed on the merits. Two,
22 whether the applicant will be irreparably injured, absent a
23 stay. Three, whether issuance of the stay will
24 substantially injure the other parties interested in the
25 proceeding. And four, where the public interest lies.

1 In terms of the fourth -- the first factor,
2 whether the stay applicant -- and here's it's applicants --
3 have made a strong showing that they are likely to succeed
4 on the merits, based upon my review of all of the briefs and
5 all of the evidence, I do not find that they have made a
6 strong showing that they are likely to succeed on the merits
7 on appeal. So that factor, I find, weighs against granting
8 a stay.

9 Whether the applicant will be irreparably injured
10 absent a stay. At this point, I don't believe that the
11 applicants have -- have made that showing either. Although
12 there is argument that I guess the million dollars in the
13 trust fund will go away, and the \$250,000 administrative
14 claim will dwarf all the other claims, and then the \$27
15 million claim will substantially dwarf all other claims.

16 Those things aren't happening right now. My
17 understanding is, the 800,000 of the trust fund is going to
18 go to the Trustee for the benefit of the Debtors. The one
19 million plus is going to stay in the trust fund. I didn't
20 see anything saying that it was going to be immediately
21 distributed to Mr. Wynn.

22 MR. PAGAY: It is.

23 THE COURT: It is.

24 MR. PAGAY: It is, your Honor.

25 THE COURT: Okay. But even if it is, I'm not

1 seeing that creating irreparable injury.

2 In terms of the \$27 million claim, it would be a
3 whole lot worse if the Trustee were to litigate and lose
4 that litigation because then Wynn and Wynn Las Vegas would
5 have more than \$31 million in claims, plus the estate would
6 be burdened with all of the additional administrative
7 expenses, which I can only imagine what the amount of those
8 administrative expenses would be.

9 Further, it's common for participants in a
10 bankruptcy proceeding not to be paid the entirety of what
11 they're owed. And as has been argued extensively, each one
12 of the parties here other than GGW Global has a claim
13 against the Debtor's -- excuse me -- based upon vicarious
14 liability. And so there is going to be additional
15 litigation regarding that.

16 So in terms of whether the applicants will be
17 irreparably injured absent a stay, I do not find that that
18 showing has been met. But even if that showing has been
19 met, according to the Ninth Circuit in Leyva-Perez vs.
20 Holder, 640 F.3d 962, Ninth Circuit, 2011, even certainty of
21 irreparable harm has never entitled a party to a stay.

22 In terms of the third factor, whether issuance of
23 the stay will substantially injure the other parties
24 interested in the proceeding, I do find that issuance of the
25 stay will substantially injure the estate, the other

1 creditors as -- which -- who are involved in this case.

2 I understand that the major creditors, Mr. Wynn,
3 Wynn Las Vegas, Ms. Favazza and the class action creditors
4 are here. But as the Trustee pointed out in his motion,
5 there are employees who are working for the Debtor, and
6 there are creditors who actually did business with the
7 Debtors and who relied on the credit-worthiness of the
8 Debtors to extend credit to them. And those -- those
9 creditors would be substantially injured, and the estate
10 would be substantially injured if the stay were issued.

11 In terms of the public interest, generally if
12 private parties are involved, public interest is neutral.
13 But we are in the context of a bankruptcy case. And as has
14 been noted, compromises and settlements are favored by all
15 courts, including the Supreme Court.

16 So based upon my analysis of the factors, I am
17 denying the motion for stay pending appeal. The tentative
18 ruling will be posted on the docket, so it will be available
19 in public record.

20 Mr. Heyn, if you'll just upload an order that's
21 about two sentences, basically, for the reasons stated in
22 the Court's tentative as well as stated on the record, the
23 motion for settlement -- for approval of the settlement is
24 granted.

25 MR. HEYN: Yes, your Honor, I will upload that

1 order. Do you want to do anything with respect to your
2 decision on the stay motion?

3 THE COURT: Normally I have the movant do it, but
4 I'll --

5 MR. HEYN: Same order or a new order?

6 MR. PAGAY: He can do it.

7 THE COURT: He can do it. Why don't you do two
8 separate orders just so the docket is clean. Just very
9 briefly --

10 MR. HEYN: For the reasons set forth on the
11 record.

12 THE COURT: For the reasons set forth on the
13 record, Mr. -- Ms. Favazza's motion for stay pending appeal
14 was denied.

15 MR. HEYN: Thank you, your Honor.

16 THE COURT: Thank you.

17 MR. PAGAY: To clarify, your Honor, it was a
18 multiple motion. I believe all three -- three applied. So
19 it's really -- the motion of all three creditors --

20 THE COURT: So the motion for all --

21 MS. DE BARTOLOMEO: So we stay the motion of all
22 three combined?

23 THE COURT: Yeah. The combined motion of Ms.
24 Favazza --

25 MR. PAGAY: Okay. Just to be clear.

1 THE COURT: -- GGW Global and the class action
2 creditors. That's perfect.

3 MR. PAGAY: Thank you, your Honor.

4 THE COURT: Is there any other housekeeping, just
5 to make sure I didn't miss something?

6 MR. HEYN: No, your Honor.

7 THE COURT: Okay. Thank you. And I believe we're
8 back here on August 29th.

9 MR. HEYN: That's correct, your Honor.

10 THE COURT: Okay. Thank you.

11 ALL: Thank you, your Honor.

12 (Proceedings concluded.)
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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 /s/Shonna Mowrer _____ 8/12/13 _____
6 Transcriber Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8
9 /s/L.L. Francisco _____
10 L.L. Francisco, President
11 Echo Reporting, Inc.
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EXHIBIT H

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

--oOo--

In Re:) Case No. LA13-15130-SK
)
GGW BRANDS, LLC,) Los Angeles, California
) Wednesday, April 10, 2013
Debtor.) 10:30 a.m.
)

In Re:) Case No. LA13-15132-SK
)
GGW DIRECT, LLC,)
Debtor.)
)

In Re:) Case No. LA13-15134-SK
)
GGW EVENTS, LLC,)
Debtor.)
)

In Re:) Case No. LA13-15137-SK
)
GGW MAGAZINE, LLC,)
Debtor.)
)

HRG RE MOTION FOR ORDER
DIRECTING THE APPOINTMENT OF A
CHAPTER 11 TRUSTEE

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SANDRA KLEIN
UNITED STATES BANKRUPTCY JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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25

1 LOS ANGELES, CALIFORNIA WEDNESDAY, APRIL 10, 2013 10:30 AM

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: Matter number 37, GGW Brands. It's
5 also matter numbers 38, 39 and 40.

6 MS. LAW: Good morning, your Honor. Dare Law on
7 behalf of the United States Trustee.

8 THE COURT: Good morning, Ms. Law.

9 MR. PAGAY: Good morning, your Honor. Malhar
10 Pagay, Pachulski, Stang, Ziehl and Jones, together with
11 Mitchell Langberg of Brownstein, Hyatt, Farber and Schreck,
12 together for Wynn Las Vegas.

13 THE COURT: Thank you. How do you pronounce your
14 last name?

15 MR. PAGAY: Pagay, P-A-G-A-Y.

16 THE COURT: Pagay. Thank you.

17 MR. PAGAY: Thank you, your Honor.

18 MR. YASPAN: Robert M. Yaspan, Y-A-S-P-A-N,
19 attorneys -- proposed counsel for the debtor in possession.

20 THE COURT: Okay. We're here on Wynn's motion for
21 order directing appointment of a Chapter 11 trustee.

22 I'd like to hear from Ms. Law first. Even though
23 the U.S. Trustee filed a motion to dismiss yesterday, the
24 Court -- excuse me, a motion to appointment a trustee
25 yesterday, the Court did review that motion to appointment a

1 trustee.

2 I wanted to know from Ms. Dare, were monthly
3 operating reports filed?

4 MS. LAW: Thank you, your Honor.

5 Your Honor, the case was filed on February 27th so
6 they would have owed a monthly operating report for the two
7 days of February and as of -- checking the docket yesterday
8 around 6:00, 6:30, I did not see a monthly operating report
9 on file.

10 I don't know if debtor has filed it since because
11 I have not looked at the docket since that time.

12 THE COURT: Okay. And the Court has this morning
13 and there are none reflected on the docket.

14 MR. YASPAN: Your Honor, they were filed last
15 night at about 6:30.

16 THE COURT: Okay. Well, I can certainly go back
17 and check. They weren't filed timely if that's in fact what
18 occurred, Mr. Yaspan. Thank you.

19 MR. YASPAN: I --

20 THE COURT: I do take your representation that
21 they were filed, but they weren't filed timely because they
22 were due by March 15th, correct?

23 MR. YASPAN: I understand that, your Honor.

24 THE COURT: Thank you.

25 Anything else, Ms. Law? I have reviewed the U.S.

1 Trustee's motion to appoint a trustee.

2 Again, that's not on for hearing today. That's
3 not on for a hearing at the beginning of May, but I have
4 reviewed that, as well as the declaration of the NLS to
5 perform the 341(a) meeting or was present at it.

6 You actually performed it. I saw some of the
7 testimony and also information about the site visit.

8 MS. LAW: Yes, your Honor. With respect to the
9 motion that is on calendar for today, the United States
10 Trustee does not do joinders to any such motion or replies
11 to any such opposition.

12 The U.S. Trustee does independent investigation.
13 If there is grounds for a motion, we do file a motion. As
14 the Court has taken judicial notice, we did file a motion
15 for the appointment of a Chapter 11 trustee or in the
16 alternative for an examiner.

17 If the Court wants me to discuss that motion, I'm
18 happy to do that. But at this point, I think it might be
19 preferable to allow the movant to argue his motion, and then
20 if the Court needs comments or requests information from the
21 U.S. Trustee, I'd be happy to provide it at this time.

22 THE COURT: Thank you, Ms. Law.

23 MR. YASPAN: Your Honor, might I speak just for
24 moment?

25 THE COURT: Yes, Mr. Yaspan.

1 MR. YASPAN: And if I just interrupted the Court,
2 I apologize.

3 I have not seen any motion from the U.S. Trustee.
4 If I have been served with it, it could easily be that it's
5 at my server, but I was in a deposition in this matter until
6 5:00 o'clock yesterday at the offices of the Wynn attorneys,
7 and I did not go back to my office. And I have not seen
8 anything from the U.S. Trustee.

9 So I would object to the Court's consideration of
10 the documents unless we have had some due process and some
11 notice with respect to the documents.

12 Now, the same thing is true with respect to --
13 apparently to some items filed by the Wynn lawyers
14 yesterday. Even though I was in their offices, they chose
15 not to serve me with those documents. And, again, I have no
16 idea what they say, although I have heard rumors that things
17 have been filed.

18 THE COURT: Well, I can certainly tell you what
19 they say, Mr. Yaspan. It was an ex parte emergency
20 application to file, actually, a request for judicial
21 notice, which was a copy of the U.S. Trustee's motion to
22 appoint a trustee as well as the 341(a) transcript.

23 And from my review of the transcript, it was quite
24 lengthy, over 300 pages, but you represented debtor and Mr.
25 Dale was the person testifying on behalf of debtor but you

1 represented debtor during that 341(a). So you should be
2 familiar with everything that occurred during that hearing.

3 MR. YASPAN: Still, documents should be served
4 upon the debtors in order for them to be considered at
5 hearings. And even though, yes, I did attend it, I haven't
6 had the chance to review a transcript of it.

7 THE COURT: I understand that. The transcript was
8 by a court reporter at Barclay. But that being said, that's
9 not going to be the determinative factor in this hearing.

10 But I appreciate your position, Mr. Yaspan.

11 MR. YASPAN: Thank you.

12 THE COURT: I'm very familiar with the facts of
13 the case, the evidence submitted, and the allegations made
14 by both sides.

15 I considered but am not going to hold an
16 evidentiary hearing. It's not necessary in this case based
17 upon all of the evidence that's before the Court. That's
18 according to Ninth Circuit law. In re Bibo, 76 F.3d 256,
19 Ninth Circuit, 1996.

20 I believe there's more than sufficient evidence
21 upon which I can rule. Both sides are welcome to argue
22 their position. Please don't reiterate what is in your
23 papers. As I mentioned, I am very, very familiar with the
24 papers, with the evidence submitted and with the arguments.

25 Mr. Pagay, it's your motion.

1 MR. PAGAY: Thank you, your Honor.

2 As the Court just stated, the Court is very, very
3 familiar with the evidence before it. We believe that Wynn
4 Las Vegas over the course of litigation has amassed quite a
5 record in addressing the interactions between Joe Francis
6 and these debtors, and I won't repeat that record here.

7 All I will say briefly is that the integrity of
8 our process that the Court is a part of, and all of us are a
9 part of, requires the presence of a fiduciary for creditors
10 in every case.

11 In the Chapter 11 process, that fiduciary status
12 is granted immediately upon the filing of a Chapter 11
13 petition to the debtors' management.

14 And I think the evidence here begs the question of
15 who is the fiduciary in these cases. And I think the
16 evidence before the Court has shown, and it's actually
17 admitted by the debtors, that the debtors' management has
18 allowed for a period of years a massive amount of money to
19 flow unrestricted to the debtors' insider, Mr. Francis. And
20 I will not go into the evidence that the Court has already
21 reviewed in connection with that allegation.

22 We also know that the debtors' manager, Mr. Dale,
23 who testified two days ago at the 341(a) hearing was, until
24 about four and a half months ago, a human resources
25 coordinator for the debtor and spends only about two hours a

1 week managing this process.

2 What that means for the Court is that the
3 fiduciary of these estates, the person in charge of these
4 reorganizations is a part-time HR director that is working
5 for these debtors a couple hours a week and then spends most
6 of his time working human resources elsewhere.

7 So that does not, I think, bode well for the
8 fiduciary status of these debtors when their leader is in
9 fact in absentia.

10 We know also, your Honor -- I think this is
11 critical -- that the debtors' management is in a way
12 horribly conflicted by what they've allowed to occur over a
13 period of years.

14 We know that they've allowed unrestricted funds to
15 flow to Mr. Francis and third parties and it puts them in a
16 direct conflict of interest with these estates because the
17 estates may have breach of fiduciary duty claims. The
18 estates may have gross negligence claims.

19 The estates may have fraudulent transfer liability
20 that it has to investigate, and it's highly unlikely that
21 the debtors' management will investigate its own conduct
22 over the past couple of years.

23 In sum, your Honor, we know that the debtors'
24 fiduciaries are not fiduciaries. The debtors' management
25 does not qualify to steward these estates through Chapter

1 11.

2 Now, the Bankruptcy Code, as the Court is aware,
3 removes -- the Code removes discretion from the Court as to
4 whether or not to appoint a trustee when cause is shown
5 under 1104(a)(1).

6 We believe, your Honor, that Wynn Las Vegas has
7 amassed that record such that cause is ample in these
8 circumstances where there has been an entirely -- no aspect
9 of fiduciary status has been maintained by the debtors'
10 management. Again, a part-time HR employee.

11 Your Honor, I have a feeling that if the Court is
12 to review the items that the Court did authorize us to file
13 and to add to this record this morning, I don't know if the
14 Court has had a chance to do that.

15 THE COURT: It was over 300 pages. I definitely
16 looked at some parts of it but not in great detail.

17 MR. PAGAY: Understood, your Honor. And, again, I
18 don't know if Ms. Law will have an opportunity to highlight
19 some of those, since she's obviously the one that took the
20 most examination at that 341(a) hearing.

21 But one image that I sort of want to leave the
22 Court with is, I asked the manager of the debtors -- I asked
23 "Well, how did you get the job? How did you get the job
24 managing all these entities, the CEO, the top dog? How did
25 you get that job? Did you apply for it?"

1 He said, "No." I asked him "Well, did you
2 interview to be the corporate leader of these entities? Did
3 you interview for it?" He said, "No." So I asked him how
4 he got the job.

5 And he said, "I was told by Mr. Tim," who is an
6 attorney both for Mr. Francis and a voluntary non-
7 compensated attorney for these estates, "He just told me
8 that I was appointed, I was now the manager of the debtors."

9 Your Honor, it sort of speaks volumes that an
10 attorney for both Joe Francis and these estates is the one
11 that's telling and appointing effectively the CEO in these
12 cases. It shows that despite the efforts to try and
13 distance themselves from Mr. Francis, his presence is really
14 and his mark is really all over these cases.

15 So, your Honor, Wynn Las Vegas, the largest
16 creditor by far of these estates, requests that the Court
17 immediately appoint a Chapter 11 trustee.

18 THE COURT: Thank you.

19 MR. PAGAY: Thank you, your Honor.

20 THE COURT: Mr. Yaspan?

21 MR. YASPAN: Thank you.

22 Let me get my folder here first.

23 Your Honor, in every Chapter 11 at the beginning
24 of the case where there is a motion for a trustee, the Court
25 is faced with arguments that the debtor in its pre-filing

1 capacity violated one rule or another, committed fiduciary
2 fraud or broke contacts, didn't pay creditors, any one of a
3 number of litany of things -- number or litany of things
4 that are bad items in the pre-filing light.

5 In determining whether or not to appoint a
6 trustee, a creditor or a moving party needs to show more
7 than pre-filing bad acts. There needs to be bad acts or
8 questionable acts in the Chapter 11 itself.

9 Here, there is no evidence before the Court that
10 this DIP has acted in any inconsistent with its duties. The
11 Court pointed out that the MOR was filed late, but it was
12 filed.

13 The MOR -- I disagree. I think it only should
14 file evidence and information for one day because the case
15 was filed in the evening of the 27th, so we're talking about
16 February 28th and that would have been the time period for
17 the documents that were filed.

18 Very little happened on the one day. The Court
19 can look at it and see it.

20 Now, with respect to the allegations that are in
21 the moving party's motion, all of the evidence seems to
22 reveal a frustrated creditor of Joe Francis. That is what
23 this record shows. And there have been disputes between Mr.
24 Francis and Mr. Wynn of a personal nature that have gone on
25 for many, many years.

1 Let's assume all that is true. That would be then
2 a fight as to whether or not a judgment creditor of Mr.
3 Francis can execute on a supposed interest in these debtors
4 or their parents in an effort to control GGW.

5 In other words, that claims creditor -- and it's a
6 creditor only because of the wider definition in Bankruptcy
7 Code section 101. It's not a creditor of this case in the
8 normal sense of the word. It doesn't have any claim against
9 these debtors directly but only through the interest of the
10 shareholder or the member or the grandfather of the member,
11 allegedly.

12 Now, to the extent that it has a claim, it takes
13 the position of being a creditor subordinate to other
14 creditors.

15 The real fight in this case is whether or not they
16 can promote themselves from a subordinated creditor which
17 comes in through a claim against an alleged member, or are
18 they a trade creditor equal in priority with the telephone
19 company.

20 There are no secured creditors in this case.

21 So really, it's a question of a fight between
22 unsecured creditors.

23 Now, to the extent that this creditor is claiming
24 to be able to promote itself, this Court can make that
25 decision. It's a legal decision, maybe mixed with some

1 facts. But that is one that should be addressed in the full
2 course of the case.

3 Now, the other part of the argument is, "Well,
4 even though we haven't shown that they've done anything bad
5 during the case, there's a potential for them to do
6 something bad in the future." But that's true for every
7 debtor in possession.

8 It is a policy decision that Congress made when
9 they created a presumption for debtor in possessions.

10 Here, those presumptions have not been met. I
11 would have wanted, if I were the creditors' lawyer, to see
12 evidence of payments to Mr. Francis or to anyone not
13 entitled to money. Those payments are not in front of the
14 Court.

15 I would have wanted, if I were the creditors'
16 attorney, to see evidence of influence on the debtors'
17 management so that they could then parade their horrors in
18 front of this Court. No evidence of that is before this
19 Court.

20 What is before this Court is a frustrated creditor
21 of Mr. Francis that is trying to exercise its control by
22 filing a motion to get a trustee.

23 Now, one of the reasons why these Chapter 11's
24 were filed was so that they could be protected while these
25 alleged owners were fighting among themselves. It was --

1 there is money that allegedly belongs to one of these
2 debtors direct that is sitting in an attorney trust account
3 that they have a claim against for \$1.8 million.

4 There is money that the debtor earns every day of
5 the year that are used to pay its bills. The schedules show
6 the but for the claim of the litigation parties, this
7 company is solvent and is paying its bills as they mature.

8 But they can't pay the bills and protect the 35
9 people that work for this debtor if Mr. Francis is entitled
10 to interrupt -- not Mr. Francis, I apologize -- Mr. Wynn and
11 his company are allowed to interrupt the cash flow of the
12 debtors.

13 The people whose jobs are at risk are being
14 protected by the 11 while the fight of the mega-titans can
15 go on. And let it go on. I have no dog in that show -- or
16 maybe in that race. I have no dog in that race.

17 The only thing that I want and that my
18 representation is directed to is the protection of the
19 companies pending this fight, which can go on off-stage
20 between the mega-titans.

21 Now, I don't know what the U.S. Trustee has said
22 in its motion. I don't know what parts of the transcript
23 need to be highlighted by me, because I haven't reviewed it.
24 For that, I have no ability to respond properly on behalf of
25 these debtors.

1 However, I'm not saying that the motion should be
2 denied with prejudice. I'm just saying that the record
3 before this Court is such that there is no evidence of
4 defalcation that exists in the Chapter 11.

5 With respect to the second operating report, the
6 debtor has obtained the services of a professional who will
7 make sure that it gets filed on that. And that one, your
8 Honor, is more meaningful because it concerns the activities
9 of the first month of operations.

10 Now -- does the Court have any particular
11 questions of me?

12 THE COURT: Well, Mr. Yaspan, you mentioned that
13 there were 35 people who work for the debtors. Are those 35
14 employees or -- I thought that there were certain employees
15 and certain independent contractors.

16 MR. YASPAN: Well, there are both. There are some
17 employees, there are some independent contractors. And the
18 debtor utilizes a leasing service so --

19 THE COURT: And -- I'm sorry.

20 MR. YASPAN: I'm sorry.

21 THE COURT: I didn't mean to interrupt you. And
22 the leasing service is with which company?

23 MR. YASPAN: Perfect Science Labs, PSL.

24 THE COURT: Okay. Thank you.

25 MR. YASPAN: And we have disclosed that to the

1 remember. We've given the employee leasing agreements to
2 the U.S. Trustee and we have been open as to the reason for
3 that. That has to do with some problems with the workers'
4 compensation and problems with obtaining coverage during the
5 Chapter 11. We know it to be necessary so this is the
6 method by which the workers are protected.

7 THE COURT: I see. Okay.

8 MR. YASPAN: And the estate is protected.

9 THE COURT: How many actual employees are there,
10 and how many are independent contractors out of that 35?

11 MR. YASPAN: If I could have a moment?

12 THE COURT: That's fine.

13 And in the meantime, I'll ask Ms. Law, I didn't
14 bring the U.S. Trustee motion out on the bench.

15 Ms. Law, can you please put on the record whether
16 or not Mr. Yaspan was served, and if he was, where he was
17 served.

18 MS. LAW: Your Honor, Mr. Yaspan is served by ECF,
19 so as soon as the motion is filed, he should have gotten an
20 ECF notice.

21 The only people that actually got paper notice,
22 which was prepared by my clerk, was the debtor, because
23 that's what's required under the local rules. They get
24 paper service.

25 But counsel for the debtor received ECF service as

1 well as counsel for the Wynn and any other attorney who
2 asked for ECF service.

3 THE COURT: And I believe the motion was filed
4 somewhere around 3:00 o'clock yesterday, between 3:00 and
5 4:00 maybe?

6 MS. LAW: Yes, your Honor. I personally do my own
7 filing for ECF, so it was around that time.

8 THE COURT: Thank you.

9 Okay. Mr. Yaspan?

10 That was the only question I had, Ms. Law.

11 Mr. Yaspan?

12 MR. YASPAN: The answer is 13.

13 THE COURT: Thirteen full-time employees or
14 employees and then the remaining 22 are independent
15 contractors?

16 MR. YASPAN: They're not employees of any of the
17 debtors. Of the 13 -- just a minute -- two are two-thirds
18 allocated to Direct. The remaining one-third is allocated
19 to another company.

20 THE COURT: Which company is that?

21 MR. YASPAN: I don't know but my guess would be
22 Perfect Science Labs.

23 THE COURT: Okay. Thank you.

24 Mr. Yaspan, I don't have any questions of you. Is
25 there anything further you'd like to put on the record?

1 MR. YASPAN: Yes, and that is that service of
2 process of the motion to appoint a trustee, based on what
3 was served upon us, appears not to have been made upon all
4 of the creditor body.

5 THE COURT: Thank you.

6 Mr. Pagay?

7 MR. PAGAY: Just a couple of things, your Honor.

8 Debtors' counsel makes much of the fact that we
9 are a disputed creditor. That's how the debtors in all the
10 cases scheduled us.

11 I also note, your Honor, that just about every
12 single creditor in the cases, all of them, is scheduled as
13 disputed in some way, except for a couple including Mr.
14 Francis's attorney and the entity that allegedly licenses
15 intellectual property to the debtor and is owed some
16 unspecified amount, 1.5 million or excess.

17 So Francis-related remembers are undisputed, it
18 appears, but all the rest of us are disputed, so a lot of us
19 are in the same boat.

20 Another thing that debtors' counsel said, which I
21 believe is actually an incorrect statement of the law, is
22 that the Court is not to look to pre-petition conduct.

23 I think section 1104(a)(1) of the Bankruptcy Code
24 is quite clear that the Court, upon finding cause, including
25 fraud, dishonesty, incompetence or gross mismanagement

1 either before or after the case is allowed to consider that,
2 and in some cases discretion is taken away from the Court
3 and the Court must appoint a trustee if that cause is found.

4 Thank you, your Honor.

5 THE COURT: Thank you.

6 Ms. Law.

7 MS. LAW: Your Honor, I'd like to reply to some of
8 the argument made by counsel for the debtor.

9 In his argument, counsel for the debtor basically
10 states that if the Court were to grant a motion, that the
11 trustee would act in the interest for Wynn, basically being
12 Wynn's trustee. That's not a correct statement.

13 When the U.S. Trustee, who is not a creditor in
14 this case and is given standing by the Code to appear and to
15 make argument before the Court, appoints a Chapter 11
16 trustee, that is an independent fiduciary on behalf of all
17 creditors.

18 That trustee does not represent one creditor to
19 the detriment or benefit of any other creditor. That
20 remember is an independent fiduciary for all the creditor
21 bodies, particularly the unsecured creditors but all
22 creditors.

23 So that is not a correct statement to say that if
24 the Court were to grant the motion, that the trustee would
25 be a Wynn trustee.

1 With respect to the statement that the companies
2 are solvent and that they were paying their debts as they
3 become due, I would note that there is, on the debtors'
4 schedule, a \$1.5 million royalty payment to Path Media.

5 The 341(a) testimony will show that that agreement
6 was terminated. The representative who testified, Mr. Dale,
7 did not know why it was terminated. He was not manager at
8 the time of the termination.

9 But eventually the debtor had to renegotiate a new
10 agreement with Path Media to be allowed the use of the Girls
11 Going Wild licensed name. Mr. Dale did not know the terms
12 of that agreement. And that agreement only goes until May
13 2013.

14 So it is unclear whether the debtor in fact was
15 able to pay their debts as they became due, because
16 obviously, this 1.5 royalty payment does not appear to be a
17 payment that was due right before the filing but had in fact
18 accumulated over time.

19 Also, in reviewing the debtors' opposition, the
20 opposition indicated that the debtor needed to have Mr.
21 Francis as the face of Girls Gone Wild. The testimony at
22 the 341(a) indicates and it will show that they have not
23 allowed him use of the credit card after the March
24 statement.

25 There is a March American Express statement that

1 shows use by Mr. Francis and others.

2 And the testimony will show that Mr. Dale stated
3 that his credit card has in fact been terminated and that
4 they're only paying for use of his vehicle.

5 But the opposition makes much of the fact that
6 they need him as the face of Girls Gone Wild, so that begs
7 the question of how are they going to continue to be allowed
8 to have him be the informal face of the company if they have
9 now ceased paying his expenses and allowed him unfettered
10 use of that American Express card.

11 THE COURT: Thank you.

12 Mr. Pagay, is there anything further?

13 MR. PAGAY: No, your Honor.

14 THE COURT: I'll deal with a couple of preliminary
15 matters first and then get to the ruling.

16 There's -- and just so the record is clear, we're
17 here on the motions for order directing the appointment of a
18 Chapter 11 trustee that were filed by Wynn Las Vegas LLC on
19 March 21st in all GGW cases.

20 And I'll refer to the cases collectively, and
21 those cases were filed by GGW Brands, GGW Direct, GGW
22 Events, and GGW Magazine. And those cases were all filed on
23 February 27, 2013.

24 On the same day as filing the motions, Wynn also
25 filed an application for order shortening time for notice of

1 hearing. And on 3/22 the Court granted the application, set
2 a briefing schedule, and set the motion for hearing today at
3 10:30.

4 On March 29th each debtor filed an opposition, and
5 on April 4th Wynn filed a reply.

6 On 3/21, on the same date that Wynn filed the
7 motion, Wynn also filed a request for judicial notice and
8 attached a number of documents. Debtors and Wynn also filed
9 numerous evidentiary objections.

10 Although not currently before the Court, the U.S.
11 Trustee filed a motion to appoint a trustee yesterday
12 between 3:00 and 4:00 in the afternoon. That motion is
13 scheduled for hearing May 9th.

14 Although Mr. Yaspan claims that he has not seen
15 that motion, I note that he is an ECF filer, and as
16 represented by Ms. Law, he was served with that motion at
17 the time that it was filed.

18 Late yesterday, Wynn filed an ex parte emergency
19 application for order authorizing Wynn to file a
20 supplemental request for judicial notice and notice of
21 lodgment of transcript of 341(a) meeting of creditors. I
22 granted that ex parte application earlier today.

23 In terms of due process claims, due process is
24 what's necessary under the circumstances. I'm not
25 adjudicating the U.S. Trustee's motion; however, I am

1 considering some of the statements in the 341(a) and I don't
2 believe there can be any due process claim considering that
3 Mr. Yaspan was present throughout the 341(a) hearing and
4 represented debtors during that hearing.

5 In terms of preliminary matters, Wynn filed a
6 request for judicial notice. Wynn requested that the Court
7 take judicial notice of six documents that were filed in
8 various state court actions.

9 Debtors did not file an opposition to the request
10 for judicial notice. Pursuant to Federal Rule of Evidence
11 201(b), the Court can judicial notice of a fact that is not
12 subject to reasonable dispute because it is generally known
13 within the trial court's territorial jurisdiction or can be
14 accurately and readily determined from sources whose
15 accuracy cannot reasonably be questioned.

16 Here, all of the documents attached to the request
17 for judicial notice were publicly filed. The Court can take
18 judicial notice of the fact that these documents were filed,
19 which is undisputed and a matter of public record. And
20 that's pursuant to Lee vs. City of Los Angeles, 250 F.3d
21 668, Ninth Circuit, 2001.

22 The Court, however, cannot take judicial notice of
23 the facts stated in those publicly filed documents. And
24 there's a slew of case law that says you can take judicial
25 notice of the fact that a document has been filed but the

1 internal facts, the Court cannot take judicial notice of
2 because they're hearsay and they also -- the doctrine of
3 collateral estoppel would be superfluous if the Court could
4 take judicial notice of the actual facts contained in those
5 pleadings.

6 Evidentiary objections. On 3/29, debtors filed
7 evidentiary objections to the declaration of Mitchell
8 Langberg that was filed in support of the motion.

9 On April 4th, Wynn filed a response to the
10 evidentiary objections. The Court has considered and
11 overrules each of the three evidentiary objections asserted
12 by the debtor.

13 The Court notes that the basis for many of those
14 objections is hearsay.

15 Many of the statements to which debtors object
16 were made by Robert Kluger, an individual who was designated
17 by debtors pursuant to Federal Rule of Civil Procedure
18 30(b)(6) and Nevada Rule of Civil Procedure 30. And other
19 statements were made during depositions of debtors' lawyers
20 or employees.

21 Statements made by these individuals are
22 admissible pursuant to FRCP 32(a) and FRE 801(d)(2).

23 Debtors also claim that some of the evidence did
24 not comply with local bankruptcy rule 7031-1(b). The Court
25 notes there was no such LBR.

1 It appears the debtors meant to cite LBR
2 7030-1(b), which requires a party who seeks to offer
3 deposition testimony pursuant to FRCP 32 and FRE 803 or 804
4 to lodge the original deposition transcript and a copy
5 pursuant to this rule with the clerk at least seven days
6 before the hearing or trial at which it is to be offered.

7 On April 4th, which was seven days before the
8 hearing, Wynn filed two notices of lodgment pursuant to LBR
9 7030-1. Therefore, Wynn complied with the LBRs.

10 Finally, the basis for a significant number of
11 debtors' evidentiary objections is attorney-client
12 privilege.

13 Courts utilize an eight-part test to determine
14 whether the attorney-client privilege applies. That is U.S.
15 vs. Richey, 632 F.3d 559, 566, Ninth Circuit, 2011.

16 As the movant GGW has the burden of establishing
17 the relationship and privileged nature of the communication,
18 the attorney-client privilege exists where legal advice of
19 any kind is sought from a professional legal advisor in his
20 capacity.

21 As such, the communication relating to that
22 purpose made in confidence by the client are at his
23 insistence permanently protected from disclosure by himself
24 or by the legal advisor unless the protection is waived.
25 That's U.S. vs. Graf, 610 F.3d 1148, Ninth Circuit, 2010.

1 The fact that a person is a lawyer does not make
2 all communications with that person privileged. Because it
3 impedes the full and free discovery of the truth, the
4 attorney-client privilege is strictly construed.

5 Here, debtors have failed to demonstrate that the
6 objected-to statements were legal advice or were made in
7 confidence.

8 Additionally, most of the statements to which
9 debtors object relate to communications that Joseph Francis
10 had with various counsel. In response to Wynn's motion,
11 debtors argued repeatedly that Francis is not an employee,
12 manager, owner or officer of the GGW entities and they
13 assert that Francis has absolutely no control over debtors.

14 Debtors cannot take inconsistent positions in this
15 case. Debtors cannot claim that communications between
16 Francis and counsel should be protected by debtors'
17 attorney-client privilege when their position is that
18 Francis is merely a consultant.

19 Now there is case law that if a consultant is the
20 functional equivalent of an employee, that consultants'
21 communications with a corporate lawyer would be privileged.
22 However, based on debtors' characterization of Francis's
23 role, there would be no basis for the Court to find that he
24 was the, quote, functional equivalent of an employee.

25 And further there is a dearth of evidence

1 regarding the purpose of the communications or that the
2 communications were made in confidence.

3 Wynn made numerous evidentiary objections to the
4 declaration of Joe Francis, to the declaration of
5 Christopher Gale, and to the Evidence Code of Ron Tim.

6 Wynn objects to seven statements contained in
7 Francis's declaration. The objections are based on lack of
8 foundation, improper opinion, apparent hearsay, and
9 relevancy.

10 Federal Rule of Evidence 602 provides that a
11 witness may testify to a matter only if evidence is
12 introduced sufficient to support a finding that the witness
13 has personal knowledge of the matter.

14 Further, pursuant to FRE 701, if a witness is not
15 an expert, testimony in the form of an opinion is limited to
16 one that is rationally based on the witness's perception,
17 helpful to clearly understanding the witness's testimony or
18 to determining a fact in issue, and not based on scientific,
19 technical or other specialized knowledge.

20 The Court finds that none of the objected-to
21 portions of Francis's declaration run afoul of either
22 Federal Rule of Evidence 602 or 701. Francis's statements
23 are based on his personal knowledge and none appear to be
24 opinions. Even if they could be characterized as opinions,
25 they are based on his own perception and are not based on

1 scientific, technical or other specialized knowledge.

2 Additionally, the Court has reviewed the portion
3 of Francis's declaration to which Wynn objects on hearsay
4 grounds and overrules those objections.

5 Finally, Wynn's fourth and fifth objections relate
6 to certain portions of Francis's declaration. Those relate
7 to that he was incarcerated for 11 months in 2007 and 2008.
8 During that period, he had no involvement with his business.
9 After he was released, he discovered that the business was
10 looted by other officers of Mantra.

11 He then states in late 2009, only hours after
12 criminal tax charges had been settled, the IRS took
13 virtually all of his assets and also took Mantra's operating
14 cash. That left the company unable to operate and it
15 effectively ceased to exist.

16 Pursuant to FRE 401, evidence is relevant if it
17 has any tendency to make a fact more or less probable than
18 it would be without the evidence, and (b) the fact is of
19 consequence in determining the action.

20 Further, according to FRE 402, relevant evidence
21 is generally admissible and irrelevant evidence is not
22 admissible. As the Supreme Court has noted, relevance is
23 determined, quote, "in the context of the facts and
24 arguments in a particular case and relevancy is not an
25 inherent characteristic of any item of evidence but exists

1 only as a relation between an item of evidence and a matter
2 properly provable in the case." That's Sprint/United
3 Management Company vs. Mendelsohn, 552 U.S. 379, 2008.

4 Initially, it might appear that what occurred
5 between 2007 and 2010, as well as issues related to Mantra,
6 are not relevant to whether a Chapter 11 trustee should be
7 appointed in these cases.

8 The Court, however, finds that these statements
9 are relevant based on Wynn's contention that Francis has a
10 history of forming business entities in order to frustrate
11 creditors.

12 The information in Francis's declaration is
13 relevant to his motivation in forming new business entities
14 after he was released from prison.

15 Wynn objects to 19 statements contained in Dale's
16 declaration. The vast majority of the objections are based
17 on lack of foundation or improper opinion and legal
18 conclusion of a lay witness or improper opinion without
19 foundation.

20 Wynn's objections on these bases are overruled for
21 the same reason its objections under FRE 602 and FRE 701,
22 702 and 704 were overruled regarding Francis's declaration.

23 Wynn's second and fifth objections also claim that
24 the statements may represent inadmissible hearsay or
25 potentially contain inadmissible hearsay. Wynn's second

1 objection relates to the following statement:

2 "Debtor is maintaining proper books
3 and records and is paying its bills and
4 meeting its obligations."

5 Wynn's fifth objection relates to this portion of
6 Dale's declaration:

7 "If a Chapter 11 trustee is
8 appointed, Francis would likely no
9 longer permit his image to be used with
10 the GGW entities and the licenses likely
11 would not be renewed and the Chapter 11
12 trustee would simply be presiding over
13 the end of the debtors' business and
14 liquidation of a few remaining assets."

15 These objections are overruled. The objected-to
16 statements are not hearsay.

17 Wynn's fourth and 18th objections also indicate
18 that the statements violate the best evidence rule. Wynn's
19 fourth objection relates to this portion of Dale's
20 declaration:

21 "The lifeline of GGW entities are
22 the licenses from a third party to use
23 the Girls Gone Wild and GGW name on
24 services and products and those licenses
25 are based on a short-term agreement that

1 expires in a matter of months."

2 The 18th objection is to the following statements
3 made by Dale:

4 "These intellectual property rights
5 acquired by the GGW entities to operate
6 their business are licensed to the GGW
7 entities by an unaffiliated company,
8 Path Media pursuant to a license
9 agreement that expires on May 31st,
10 unless affirmatively renewed monthly by
11 both Path Media and the GGW entities."

12 Although the Court does find that these statements
13 do violate the best evidence rule -- and I'll describe how
14 the Fourth Circuit describes it -- I note that the actual
15 license between GGW Direct and Path Media is part of the
16 record, and that was actually submitted in a filing that was
17 attached to Mr. Tim's declaration.

18 So, in essence, the objection is irrelevant, but I
19 will cite from the Fourth Circuit which talks about the
20 misconception of the best evidence rule.

21 According to the Fourth Circuit, the rule applies
22 to the circumstance where the proponent seeks to prove the
23 content of a document. The rule exists to avoid guarantees
24 against inaccuracies and fraud by requiring that the
25 original of the document be offered.

1 Thus, it is more accurate to refer to Rule 1002 as
2 the, quote, original document rule, not the best evidence
3 rule.

4 This objection, although it's being sustained, is
5 actually irrelevant, because again, the actual license
6 between Path Media and GGW Direct I believe is part of the
7 record.

8 Wynn objects to seven statements contained in
9 Tim's declaration. Objections 1 through 5 relate to rulings
10 that were issued by a Nevada state court in litigation
11 involving Wynn's efforts to collect against the GGW entities
12 and miscellaneous other companies on an alter ego theory.

13 These objections are sustained because Tim was not
14 debtors' counsel in that case, and he has not presented
15 evidence, quote, sufficient to support a finding that he has
16 personal knowledge to testify on these subjects.

17 Statements 1, 2 and 5 also violate the best
18 evidence rule.

19 Wynn's sixth and seventh objections are to Exhibit
20 A and B attached to Tim's declaration which has certain
21 pages from Robert Kluger's June 22nd and August 28th
22 depositions. Wynn's bases for these objections are lack of
23 foundation, hearsay and best evidence rule.

24 These objections are overruled. It does not
25 appear that Tim was involved in either deposition, and

1 therefore, FRE 602 might be an issue.

2 However, due to the fact that Wynn introduced and
3 utilized portions of these depositions in support of its
4 motions, the Court notes that pursuant to FRCP 32(a)(6),
5 debtors, quote, could require Wynn to introduce other parts
6 of these depositions that in fairness should be considered
7 with the part introduced.

8 Similarly, FRE 106 provides, quote:

9 "If a party introduces or part of a
10 writing or recorded statement, an
11 adverse party may require the
12 introduction at that time of any part
13 that in fairness ought to be considered
14 at the same time."

15 So those are the preliminary rulings on the
16 request for judicial notice as well as the evidentiary
17 objections.

18 The substantive ruling will be read into the
19 record now.

20 The pre-petition legal proceedings that predated
21 the bankruptcy filing, I will just summarize those.

22 On June 18, '09, Wynn obtained a judgment against
23 Joseph Francis in Nevada state court paid upon unpaid
24 gambling debts. The parties, I believe, refer to this as
25 the Nevada marker judgment.

1 As of 2/13/13, Francis owed Wynn more than \$3.9
2 million on account of this Nevada marker judgment.

3 On September 30, '09, Wynn filed an action in
4 California state court seeking to collect on the Nevada
5 marker judgment. The parties call this the California
6 judgment litigation.

7 Wynn filed a, quote, judgment creditors notice of
8 motion and motion for appointment of limited receiver in
9 that matter on November 16th.

10 The court entered an order appointing limited
11 receiver in aid of execution to enforcement of judgment.

12 On April 9, 2012, a Nevada state court entered a
13 judgment in favor of Wynn and Steven Wynn as an individual
14 against Francis.

15 The Nevada defamation judgment, which is how the
16 parties refer to this matter, consisted of \$5,000,000 in
17 compensatory damages and \$2.5 million in punitive damages.
18 As of February 13th of this year, Francis owed Wynn and
19 Steven Wynn a total of more than 8.1 million on account of
20 the Nevada defamation judgment.

21 On 4/18/2012, Wynn filed a case in the Nevada
22 state court against, among others, Francis and GGW Brands,
23 Direct and Events. That's been referred to by the parties
24 as the alter ego litigation.

25 In the alter ego litigation, the court issued a

1 temporary restraining order that froze nearly \$2,000,000 of
2 funds claimed to belong to GGW Brands and/or Direct that
3 were held in a client trust account by an attorney David
4 Houston.

5 On July 20, 2012, the court in that matter issued
6 a preliminary injunction which continued to freeze those
7 funds.

8 Wynn has filed a motion for summary judgment in
9 the alter ego litigation.

10 Debtors' organizational structure. The evidence
11 demonstrates that as of 6/22/12, the organizational
12 structure of the debtors was as follows.

13 GGW Brands is a holding company that owns GGW
14 Direct, Events, and Magazine.

15 GGW Brands is the sole member of Direct, Events,
16 and Magazine.

17 GGW Direct, Events, and Magazine are member
18 managed companies, meaning that they have no separate
19 managers.

20 GGW Brands is also a member managed company. Its
21 sole member manager is Pablo Holdings LLC. Pablo Holdings
22 is a manager managed company.

23 Pablo Holdings' sole manager was Francis until
24 Dale was appointed. And although there doesn't appear to be
25 a specific date in the record when Dale was appointed,

1 according to his testimony during the 341, I believe it was
2 sometime late October, early November.

3 Dale claims that he was elevated by Asia Trust
4 Limited as trustee of Ridgewood Global Trust to be the
5 manager of Pablo Holdings. And that came from Dale's
6 declaration that was signed on 12/21/12. It was attached to
7 the Langberg declaration. It's Exhibit 11.

8 The sole member of Pablo Holdings is the Ridgewood
9 Global Trust. The settlor-trustor of Ridgewood Global Trust
10 is Francis and the trustee is a quote, trust company in the
11 Cook Islands Asia Trust Limited, end quote.

12 Although there's no definitive evidence regarding
13 the beneficiaries of the Ridgewood Global Trust, Kluger who
14 was designated by GGW Brands and Direct as their 30(b)(6)
15 deponent in the alter ego litigation, testified he, quote,
16 assumed that Mr. Francis is at least one beneficiary of the
17 trust.

18 Summary of the parties' positions. In the motion
19 Wynn argues that the Court should appoint a Chapter 11
20 trustee because of the diversion of debtors' assets to
21 satisfy Francis's personal obligations and the debtors' use
22 of puppet management to ensure that debtors' funds will
23 continue to be funneled to Francis to support his lifestyle.

24 According to Wynn, the evidence demonstrates the
25 complete abandonment of the debtors' fiduciary

1 responsibilities to creditors.

2 Essentially, Wynn alleges that Francis, despite
3 having no formal position with debtors, controls debtors and
4 that debtors improperly transfer funds to him.

5 Wynn also alleges that since Wynn has taken steps
6 to attempt to collect from the GGW entities, debtors'
7 management structure was changed to avoid impending court
8 orders.

9 In the opposition, debtors claims that Francis has
10 no actual power, control or authority over the GGW entities.
11 They contend that he is a consultant and that the GGW
12 entities continue to use his face for the brands.

13 Debtors acknowledge that Francis facsimile
14 signature was used on company checks which simply, according
15 to debtors, provided an appearance of continuity with third
16 party suppliers.

17 According to debtors, they voluntarily chose to
18 pay Francis's personal expenses to support his lifestyle,
19 but the GGW entities do not intend to and have not continued
20 to pay any of Francis's expenses post-petition other than
21 allowing Francis to use company vehicles to help maintain
22 the brand.

23 Debtors repeatedly assert that the trustee of the
24 trust, not Francis, has the ultimate say regarding the
25 management of the GGW entities.

1 Debtors, when they say that the trustee of the
2 trust had the ultimate say, don't specify to which trust
3 they are referring. In light of the context of the
4 organizational structure of the various entities, it is most
5 likely Asia Trust Limited, which is the trustee of Ridgewood
6 Global Trust.

7 The Court notes that a trust cannot act on its own
8 and debtors have not identified who on behalf of Asia Trust
9 Limited actually had the ultimate say, according to debtors,
10 regarding management of the GGW entities.

11 Debtors question whether Wynn has standing to file
12 the motion because it is, quote, merely pursuing a reverse
13 alter ego claim against debtors. Debtors assert that under
14 Delaware law, Wynn's alter ego claim against debtors are not
15 viable.

16 Debtors also argue that Wynn has not met its
17 burden of showing by clear and convincing evidence that
18 appointment of a trustee is warranted under 1104(a)(1) or
19 1104(a)(2).

20 Wynn replies and contends that the Pablo Holdings
21 operating agreement, which is dated October 10, 2011,
22 demonstrate that the manager of Pablo, who it's undisputed
23 was Francis until Dale took over sometime late October,
24 early November, has authority over Pablo.

25 As a result, Wynn argues Francis controlled at

1 least until October, early November debtors. According to
2 Wynn, emails between Francis and Direct TV along with other
3 correspondence show that Francis has control over debtors
4 that goes beyond mere consulting.

5 Wynn argues that Dale misrepresented facts to the
6 Court when he asserted that Path Media is not affiliated
7 with debtors. Wynn claims that Path Media is structured as
8 part of the same asset protection scheme as the debtors
9 themselves and that Path Media's owner is the same as
10 debtors, Ridgewood.

11 Wynn asserts that debtors reformed as a result of
12 Francis's previous attempts to thwart creditors' collection
13 attempts. Wynn claims that Francis has de facto control
14 over debtors because he can terminate debtors' right to use
15 valuable IP.

16 Wynn highlights that certain expenses reflected on
17 Francis's personal American Express bill which debtors paid
18 on behalf of Francis were largely pedestrian expenditures,
19 such as groceries, medical expenses and utilities.

20 Therefore, Wynn asserts that these expenses were
21 not, as debtors contend, necessary to maintain an image of
22 Francis's bad boy lifestyle.

23 Wynn also claims it has standing to file the
24 motion and the burden of proof applicable to the motion is
25 one of a preponderance of the evidence rather than clear and

1 convincing.

2 Facts relating to Wynn's allegation in terms of
3 Francis's control over and authority within debtor. Wynn
4 contends that Francis, as manager of Pablo, was the ultimate
5 manager of debtors.

6 To support this contention, Wynn presented the
7 following evidence. Francis was the person who first
8 approached Kluger, a former attorney for debtors, about
9 providing legal representation to debtors.

10 The Pablo operating agreement states explicitly
11 that the manager who was Francis through late October, early
12 November and then Dale and not the member, Ridgewood Global
13 Trust, has exclusive control over the company.

14 Illustrating this exclusive control are the
15 following provisions, quote:

16 "All management powers over the
17 business and affairs of the company
18 which is Pablo Holdings are and shall be
19 exclusively invested in the manager and
20 the member, who is Ridgewood Global
21 Trust, shall not have any right to
22 participate in or exercise control over
23 management power over the business of
24 the company."

25 According to the Pablo operating agreement, the

1 manager has exclusive power to do many, many different
2 things, including opening bank accounts, acquire, dispose or
3 encumber property, use assets and file for insolvency.

4 Conversely, the member does, quote:

5 "not have any right or power to
6 take part in the management or control
7 of the company or its business and
8 affairs or to act for or bind the
9 company in any way."

10 Brian Rayment, another former attorney for
11 debtors, testified that Francis was the individual with whom
12 he dealt with respect to Rayment's representation of
13 debtors.

14 Francis had authority to choose the banks that
15 debtors would do business with. On at least one occasion,
16 Francis terminated an employee and hired a replacement.
17 Francis was the only person with in the GGW entities who had
18 the authority to terminate the employees.

19 The paychecks from the GGW entities bore Francis's
20 signature. Francis determined his own level of compensation
21 and there is no one who could have vetoed any item of
22 compensation.

23 Francis attempted to amend an agreement with
24 Direct TV so that Argyle Media Sales and not GGW Direct
25 would be the party to that agreement with Direct TV.

1 Francis through Path Media owns IP that debtors use in their
2 business and therefore he has the ability to harm debtors or
3 shut debtors down if he chooses to withhold from debtors the
4 right to use that IP.

5 Francis on behalf of the GGW entities terminated a
6 contract with Molten Logistics Management which, from the
7 emails submitted by Wynn, appeared to be a calling center.

8 On December 23, 2010, Francis sent an email to
9 Molten stating that: We are pulling out of Molten now.
10 This is official notice of termination of all contracts with
11 Perfect Science Labs and Mantra/Girls Gone Wild. This
12 termination is for fraud, overbilling and other material
13 breaches.

14 It was unclear from the record what type of
15 products Perfect Science Labs sells or what its relationship
16 to the GGW entities is. I believe that Mr. Yaspan mentioned
17 that they lease employees from Perfect Science, that GGW
18 does, or there's some type of relationship.

19 What is clear is that Francis had authority, or at
20 least represented that he had the authority, to terminate
21 contracts on behalf of the debtors as well as Perfect
22 Science.

23 Debtors argue that Francis is not an officer or
24 owner of any of the GGW entities. Debtors represent that
25 Francis has provided informal consultation services

1 regarding the operation of the debtors. They also contend
2 that Francis's name and face are forever associated with the
3 brand in the minds of the public and the association of the
4 GGW and Francis sells products.

5 The GGW entities are able to distinguish their
6 products by their association with Francis.

7 Debtors downplay Francis's role with the GGW
8 entities that characterize him as a, quote, figurehead who
9 often loudly voices opinions or recommends to staff and
10 others regarding whether someone should be hired or fired or
11 on other aspects of the business.

12 Debtors represent that Francis has no actual power
13 or control over the GGW entities. To support their
14 position, debtors submit portions of the Kluger deposition
15 dated 8/28/12 in which Kluger stated that the owner of Pablo
16 Holdings is the trust which is controlled by the trustee and
17 not Francis and that the trustee, therefore, is in control
18 of the GGW entities.

19 Kluger also testified that he did not remember
20 ever seeing a contract executed by Francis on behalf of the
21 GGW entities.

22 Turning to transfer of funds from debtors to
23 Francis. Wynn alleges that there were numerous improper
24 transfers of funds either directly to Francis or to third
25 parties on behalf of Francis.

1 Evidence of these transfers include the following:

2 Debtors would pay Francis compensation not with a
3 set salary but rather through a system whereby debtors would
4 pay Francis's personal expenses and Francis would pay taxes
5 on those reimbursed expenses at the end of the year.

6 Francis's compensation was a set amount but he
7 regularly exceeded this amount meaning the set amount became
8 irrelevant.

9 His compensation was what they paid him. And that
10 was from Kluger's deposition in August. And Mr. Kluger also
11 stated as long as Francis did not spend more than the
12 companies had after he paid his other expenses, there was
13 really no limit to the expenses that he could personally
14 make and take as his compensation.

15 Instead of net income being distributed to the
16 members of the debtors, debtors' net profits were allocated
17 to Francis and were reported on his taxes.

18 A September through October 2011 American Express
19 bill which was issued in the name of Francis personally
20 reflects exclusively nonbusiness-related expenses such as
21 clothing, dry cleaning, pharmacy, medical, and grocery store
22 charges. This AmEx bill had a balance due of a little more
23 than \$38,000 on October 1, 2011.

24 Exhibit F of the Langberg declaration is a
25 document produced by debtors in response to Wynn Las Vegas's

1 request for production. That document is titled, quote,
2 "GGW Direct transactions by account of Blue Horse
3 transactions," which reflects a total of almost three-
4 quarters of a million dollars in payments made from 3/25/10
5 to 9/10/12.

6 It is undisputed that Blue Horse Trading is an
7 entity that holds Francis's personal assets. That's from
8 Kluger's depo, 6/20/2012.

9 Exhibit F to the Langberg declaration demonstrates
10 that on November 3, 2011, GGW Direct made a \$38,441.59
11 payment to American Express. The Court has also reviewed
12 the U.S. Trustee's motion to dismiss.

13 The Court notes that GGW Direct, based upon their
14 records, continued to make payments on behalf of Blue Horse
15 through at least November 16th for a net total of almost
16 \$45,000. This is reflected in GGW Direct's general ledger
17 that identifies these payments as accounts receivables from
18 an affiliate company.

19 Debtors also paid Francis's personal legal
20 expenses. For example, Liner Grode -- and it has a very
21 long name -- begin representing Francis in 2010 and did not
22 begin representing GGW Direct until the summer or fall of
23 2011, yet GGW Direct began making payments to that firm in
24 the December of 2010.

25 Debtors also paid legal fees to Attorney

1 Aftergood, who represented Francis personally in the Nevada
2 defamation action brought by Wynn and Steven Wynn,
3 litigation in California regarding a defamation claim
4 brought by Steven Wynn, as well as the California judgment
5 litigation.

6 Finally, debtors paid legal fees to Attorney David
7 Houston who has represented Francis personally on a number
8 of matters including those related to Francis's indictment
9 by the IRS as well as working on the appeal of the Nevada
10 marker judgment.

11 Debtors acknowledge that they paid Francis's
12 expenses before the GGW entities filed bankruptcy.
13 According to Dale, the GGW entities' business records reveal
14 that, quote, certain personal expenses of Joe Francis had
15 been voluntarily paid by the GGW entities prior to his
16 becoming manager.

17 This was done with the consent of Ridgewood
18 Global's trustee, that is Asia Trust Limited.

19 When such expenses were paid, Mr. Dale continued,
20 "It was not pursuant to any contract but rather done by the
21 GGW entities to try to maintain the public perception of the
22 lifestyle of Joseph Francis."

23 Dale notes, however, that there are no contracts
24 requiring any of the GGW entities to pay any expenses on
25 behalf of Francis and there were no other contracts of any

1 kind with Francis, quote:

2 "... other than an indemnity agreement
3 between GGW Direct and Francis in which
4 GGW Direct agreed to indemnify Francis
5 for attorneys' fees and other costs he
6 may incur in connection with litigation
7 arising due to the public's perception
8 of him as the public persona of Girls
9 Gone Wild."

10 In August 2012, Dale, who at that time was the GGW
11 entities' human resource manager, testified that he
12 maintained employment agreements with employees and
13 independent contractors and had never seen a contract
14 between debtors and Francis that contained an indemnity
15 agreement.

16 More recently, Dale, who is now the manager of
17 Pablo and claims to be the manager of GGW Brands, claims
18 that debtors have not continued to pay Francis's expenses
19 post-petition but that Francis is still allowed use of
20 company vehicles to maintain the brand.

21 To support their position that it was appropriate
22 for the GGW entities to pay Francis's legal personal bills,
23 Kluger testified that when he was first engaged by debtors,
24 there was an issue of whether the legal fees that were paid
25 were properly deductible by the GGW entities as ordinary and

1 necessary business expenses.

2 Kluger stated that he got a file of attorneys'
3 engagements letters, reviewed the letters, and called some
4 of these attorneys to determine the nature of the engagement
5 and to determine whether the legal fees that had been paid
6 were properly deductible by the debtors as business
7 expenses.

8 Kluger testified that most of the legal expenses
9 incurred were legitimate business expenses because the
10 assets of the company in most cases were being protected in
11 the litigation.

12 Turning to changes in debtors' management
13 structure. The evidence submitted by Wynn demonstrates that
14 sometime in late October, early November, Dale was, quote,
15 elevated by Asia Trust Limited as trustee of the Ridgewood
16 Global Trust to be the manager of Pablo. And that comes
17 from Dale's declaration dated December 21, 2021.

18 The Court notes that Dale is the person who signed
19 all of the bankruptcy petition schedules and statement of
20 financial affairs and he signed those documents as the
21 debtors' manager.

22 On 8/29, when Dale's deposition was taken in the
23 alter ego litigation, he was a human resources manager for
24 GGW Brands and he claimed that at that time his knowledge of
25 the organizations was limited.

1 On October 3, 2012, Dale identified himself as the
2 legal affairs manager of GGW Brands in those entities'
3 responses to request for production of documents in the
4 alter ego litigation.

5 Dale claims that since he became manager of Pablo
6 Holdings and GGW Brands, Francis has not been an employee of
7 the GGW entities, is not paid any salary or other
8 compensation, does not have authority to make any decision
9 for the GGW entities, and does not have any authority over
10 Dale.

11 In Dale's 3/28/2013 declaration, he states that
12 Francis is not an owner or manager of debtor and he is not
13 an officer or owner of any GGW entity.

14 According to Dale, debtors' continued existence
15 relies on Francis's informal involvement with the company
16 through him allowing his image to be used to sell
17 memberships and other goods and services and consulting
18 services provided by Francis.

19 Dale alleges that the lifeline of the GGW entities
20 are third party licenses to use the GGW and Girls Gone Wild
21 name and those licenses expire in a few months.

22 Dale claims that if a Chapter 11 trustee is
23 appointed, Francis would likely no longer permit his image
24 to be used with the GGW entities and the licenses likely
25 would not be renewed and the Chapter 11 trustee would simply

1 be presiding over the end of debtors' business and
2 liquidation of a few remaining assets.

3 In Francis's 328 declaration, he asserts that he
4 started the GGW brand many years ago but no longer has any
5 official role with respect to the brand. He claims, "I am
6 not and have never been an owner or manager of the GGW
7 entities."

8 He states that:

9 "In the past, debtors have paid
10 certain related to my lifestyle.
11 Because my image helps debtors sell
12 products and services because of my past
13 association with the GGW brand, I have
14 provided informal consultation to the
15 GGW entities."

16 During the 341(a) meeting, Dale appeared and
17 testified on behalf of the debtors. As I mentioned, I got
18 to briefly review Mr. Dale's testimony this morning. There
19 was more than 300 pages filed, but a few key points.

20 Mr. Dale mentioned that he works approximately
21 four to five hours a week on behalf of all of the GGW
22 entities. He's actually employed with an unrelated entity,
23 Music Clips, as an HR manager.

24 Mr. Dale testified that he didn't apply for the
25 job. He was actually contacted and told that he was going

1 to be the manager.

2 So those are just a few of the statements that Mr.
3 Dale made in the 341(a).

4 On 4/2 the court issued an order re evidence to be
5 submitted by debtor by 4/5 at noon in the GGW Direct case.
6 In the order, the court indicated it had reviewed GGW
7 Direct's statement of financial affairs including a multi-
8 page document titled "GGW Direct finds report November 30,
9 2012 through February 27, 2013."

10 In the order the court indicated it sought copies
11 of certain documents including complete copies of all bills,
12 invoices or other evidence substantiating the payments
13 listed on Exhibit A which was attached to the order, as well
14 as copies of checks, wire transfers, et cetera, or any other
15 evidence demonstrating that the payments were made within 90
16 days before filing of the bankruptcy.

17 As I mentioned, attached was Exhibit A which
18 listed a number of payments for which the court sought
19 information. The total of those payments were more than
20 \$281,000 that were paid in the three months before filing to
21 American Express, more than \$274,000 paid to Argyle Online,
22 \$232,000 paid to J.G. Marzan (phonetic), and \$65,000 paid to
23 Kiki Entertainment.

24 On 4/5, GGW Direct filed a declaration of Ronald
25 Tim regarding order of court dated April 2, 2013. Tim

1 states he is an attorney for GGW Direct and that when he
2 received the order, he contacted Mandy Isaac, GGW Direct's
3 controller, and asked her to research the books and records
4 of the debtor and to locate documents responsive to the
5 order.

6 She did such investigation under his supervision
7 and transmitted to him the documents that were attached to
8 Mr. Tim's declaration.

9 In terms of the American Express bill, he states
10 that the payments made by GGW Direct are documented and
11 supported by the bills sent by American Express to GGW
12 Brands.

13 Exhibits 1 through 4 attached to Mr. Tim's
14 declaration are AmEx bills for an account ending in 6-54007
15 for a business Centurion card issued in the name of GGW
16 Brands, Joseph R. Francis, for the periods ending November
17 23, 2012; December 24, 2012; January 24, 2012; and February
18 21, 2013, respectively.

19 According to Tim, the payments designated by the
20 debtor are marked with checkmarks. A review of Exhibits 1
21 through 4 attached to the Tim declaration reveals that the
22 following payments were made on those bills: a \$40,000
23 payment, a 923,787 payment, 82,000 payment, and \$59,000
24 payment, for a total of about \$275,000.

25 The charges for each month are varied and were

1 incurred by various individuals in addition to Mr. Francis.
2 The charges include expenses for hotels, plane tickets,
3 food, and purchases at Home Depot in Mexico.

4 Some of what appear to be nonbusiness-related
5 expenses include charges at Petco and Lucky Strike Bowling
6 Alley.

7 Each of the payments listed above indicate that
8 they were made by Mr. Francis on the applicable date.

9 Mr. Tim also indicated that Exhibit 5 to his
10 declaration was a copy of an American Express bill for the
11 period ending February 15, 2013. A review of Exhibit 5
12 reveals that the American Express bill is for an account
13 ending in 6-21000 for a business Green rewards card issued
14 in the name of Perfect Science Labs, Joseph R. Francis.

15 That payment was made on January 22, 2013 in the
16 amount of \$6300. Mr. Tim did not address why approximately
17 a month before debtors filed for bankruptcy, they were
18 paying a bill for Perfect Science Labs.

19 The total amount reflected as paid on Exhibits 1
20 through 5 is \$281,000 and change, which is the same amount
21 that GGW Direct listed on the statement of financial
22 affairs.

23 Tim states that the payments to Argyle Online in
24 the amount of \$274,250 are related to a contract entitled
25 "Trademark license agreement by and between GGW Direct LLC

1 as the licensee and Path Media Holdings LLC as the
2 licensor," and that a copy of that agreement is attached as
3 Exhibit 6.

4 Tim directs the Court's attention to paragraph
5 1(d) which sets out the initial term of the license
6 agreement. Exhibit 6 is a trademark license agreement dated
7 2/25/13, two days before debtors filed, that was entered
8 into between Path Media and GGW Direct.

9 The agreement reveals that the licensor, who is
10 Path Media, and the licensee, GGW Direct, agree to an
11 exclusive non-transferrable and limited license to use
12 certain trademarks related to Girls Gone Wild, which are
13 identified in Exhibit A to the agreement.

14 The agreement also provides that, quote:

15 "In consideration for such a
16 license, GGW Direct has paid Argyle
17 Online, LLC licensor's U.S.
18 representative a license fee in the
19 amount of \$274,250, the initial term
20 license fee for the initial term which
21 is defined below."

22 The agreement also provides that:

23 "The term of this agreement and the
24 license granted herein is for a period
25 commencing on the effective date and

1 expiring on May 31st."

2 The agreement also provides that it may be renewed
3 for an additional one-month period if agreed to in writing
4 by both parties.

5 On the last page of the agreement, it indicates
6 that the licensor is Path Media Holding LLC by Asia Trust
7 Limited, as trustee of the Hammersmith Trust Manager by ATP
8 Directors Limited.

9 The signatures of the persons who signed on behalf
10 of these entities are illegible and the names which were
11 handwritten above "Authorized signatories" are difficult to
12 read, although the first names appear to be Angela and Lisa.

13 Chris Dale, manager, signed on behalf of GGW
14 Direct.

15 There were certain payments to J.G. Marzan that
16 the court asked for further information for in the 4/2
17 order. Tim claimed that the payments to J.G. Marzan relate
18 to pre-filing legal services rendered to the debtor by Mr.
19 Marzan in Mexico in connection with, among other things, a
20 labor dispute.

21 Mr. Tim states that the smaller payments are
22 supported by Mr. Marzan's written billings for legal
23 services that were attached as Exhibit 7.

24 The larger payments, Mr. Tim stated, he was
25 informed related to a settlement agreement. He was

1 attempting to get a copy of the agreement from counsel. He
2 indicated that he would submit the document to bankruptcy
3 counsel when it was received.

4 Exhibit 7 consists of the following three heavily
5 redacted bills for \$1300, \$3,000 and \$3100, as well as a
6 1/23 invoice for \$23,000, which indicates it's for payment
7 for legal settlement, GGW.

8 On 4/8, Mr. Tim filed a first supplemental
9 declaration. In the Tim declaration, he states that an
10 invoice received for 146,277.28 paid to the law firm of J.
11 Luis Garcia Marzan by GGW Direct were attached hereto as
12 Exhibit 9 and evidences that such payments were settlement
13 payments for a labor dispute.

14 He was still awaiting an invoice receipt for the
15 \$53,000 that was remaining that was paid to Mr. Marzan
16 during the 90 days before debtors filed for bankruptcy. He
17 indicated he would submit that to the Court as soon as it
18 was received.

19 In the Tim 4/5 declaration, the first one, he
20 stated that the payment to Kiki Entertainment was made on
21 February 27th from debtors' pre-filing bank account at Wells
22 Fargo.

23 According to the Tim declaration, and the Wells
24 Fargo bank account which is heavily redacted, there were
25 only four legible entries, one of which is a 2/27 WT --

1 which the Court assumes is a wire transfer -- for \$65,000 to
2 Kiki Entertainment.

3 Tim concludes by stating that Mandy Isaac, the
4 controller, has not yet located any support for making this
5 transaction.

6 In the first supplemental declaration submitted by
7 Mr. Tim on 4/8, he explains that the \$65,000 payment from
8 GGW Direct to Kiki Entertainment was as follows, and I'm
9 quoting:

10 "Such amount was actually first
11 deposited in trust with debtor by
12 Perfect Science Labs for forwarding to
13 Kiki Entertainment on behalf of Perfect
14 Science Labs. Perfect Science Labs did
15 not have the ability to wire funds from
16 its account online. GGW Direct did have
17 the ability to wire funds from its
18 account online. Perfect Science Labs
19 asked, and GGW Direct agreed, in
20 February 2013 to forward monies from
21 Perfect Science Labs to Kiki
22 Entertainment, so Perfect Science Labs
23 caused \$65,000 of its funds on deposit
24 at Wells Fargo to be transferred by
25 Wells Fargo internally to debtor in

1 trust and debtor in turn online wired
2 those funds to Kiki Entertainment.
3 Attached hereto as Exhibit 10 is a
4 redacted copy of the bank statement of
5 GGW Direct evidencing the transfer of
6 \$65,000 into debtor's account from
7 Perfect Science Labs on February 26th
8 and then such amount being wired on
9 February 27th to Kiki Entertainment."
10 That's the end of the quote.

11 A review of Exhibit 10 reveals that on 2/26
12 \$65,000 was actually transferred from Argyle Online into GGW
13 Direct's Wells Fargo's account ending in the number 5232.
14 And the next day and the date that the GGW entities' cases
15 were filed, GGW Direct wired \$65,000 to Kiki Entertainment.

16 Perfect Science Labs, the Court notes, is not
17 mentioned anywhere on Exhibit 10.

18 The legal standard for a section 1104 motion
19 provides that:

20 "At any time after commencement of
21 a case but before confirmation of a
22 plan, on request of a party in interest
23 or the U.S. Trustee after notice and a
24 hearing, the court shall order the
25 appointment of a trustee --

1 "(1) for cause, including fraud,
2 dishonesty, incompetence, or gross
3 mismanagement of the affairs of the
4 debtor by current management, either
5 before or after the commencement of the
6 case ... or

7 (2) if such appointment is in the
8 interests of creditors."

9 If the moving party has met its burden under
10 either of the two subsections the court must appoint a
11 trustee.

12 The appointment of a trustee is an extraordinary
13 remedy, and there's a strong presumption that the debtor
14 should be permitted to remain in possession absent a showing
15 of need for the appointment of a trustee.

16 This presumption is based, at least in part, on
17 the debtor in possession's usual familiarity with the
18 business it has already been managing at the time of the
19 bankruptcy filing, often making it the best party to conduct
20 operations during the reorganization.

21 A Chapter 11 debtor, as representative of the
22 estate, occupies a trust relationship subject to fiduciary
23 obligations which include a prohibition against self-
24 dealing.

25 A debtor in possession's job is to get the

1 creditors paid. And its fiduciary obligations to its
2 creditors include refraining from acting in a manner which
3 could damage the estate or hinder a successful
4 reorganization.

5 In terms of the burden of proof, the parties
6 dispute what that burden should be on a motion to appoint a
7 trustee. Debtor, as one would expect, argues that it should
8 be clear and convincing evidence. Wynn argues that it's
9 only by a preponderance of the evidence.

10 The Court notes there's a split of authority
11 regarding the burden of proof and the Ninth Circuit has not
12 yet addressed that issue.

13 The Court doesn't believe it's necessary to decide
14 today whether or not the burden is preponderance or clear
15 and convincing evidence because, based upon the evidence
16 before me, there is clear and convincing evidence that a
17 trustee should be appointed.

18 I find there is clear and convincing evidence that
19 a trustee should be appointed under both 1104(a)(1) for
20 cause and 1104(a)(2) in the best interests of the creditors.

21 Again, a few preliminary issues.

22 As I mentioned, an evidentiary hearing is not
23 required and there was more than sufficient evidence in the
24 record on which the Court is basing its ruling.

25 Section 1104(a)(1) contains four non-exclusive

1 bases for finding there is cause to appoint a Chapter 11
2 trustee: fraud, dishonesty, incompetence, and gross
3 mismanagement of the affairs of the debtor by current
4 management.

5 While a certain amount of mismanagement of the
6 debtors' affairs prior to the filing date may not be
7 sufficient grounds for the appointment of a trustee,
8 continuing mismanagement of the affairs of the debtors after
9 the filing date is evidence of the need for appointment of a
10 trustee.

11 As one court noted:

12 "If a debtor had not filed
13 bankruptcy, its management might not
14 have been subject to such critical
15 scrutiny. Things are different,
16 however, now that debtor seeks
17 protection in this court, and the
18 interests of its creditors are to be
19 accorded a higher priority."

20 A court may consider both pre-petition as well as
21 post-petition conduct in determining the necessity of a
22 trustee.

23 Although diversion of funds and misuse of
24 corporate assets constitute fraud or dishonesty sufficient
25 to warrant appointment of a trustee under section

1 1104(a)(1), the fact that a debtor's prior management might
2 be guilty of fraud, dishonesty, incompetence, or gross
3 mismanagement does not necessarily provide grounds for
4 appointment of a trustee as long as the court is satisfied
5 that current management is free from the taint of prior
6 management.

7 Under 1104(a)(2), appointment of a trustee is
8 allowed even when there is no cause. When determining
9 whether it is, quote, in the interests of creditors to
10 appoint a trustee under 1104(a)(2), courts look to practical
11 realities and necessities. The standard is a flexible one
12 and courts have considered the following factors:

13 One, the trustworthiness of the debtor.

14 Two, the debtor in possession's past and present
15 performance and prospects for rehabilitation.

16 Three, the competence or lack thereof of the
17 business community and of creditors in present management.

18 And, four, the benefits derived from the
19 appointment of a trustee balanced against the cost of
20 appointment.

21 Section 1104(a)(2) may be used to justify the
22 appointment of a trustee when current management that has
23 been recently appointed is competent and honest but does not
24 have the expertise that an exceptional trustee would have in
25 reorganizing the debtor.

1 The first argument that debtors made was -- they
2 questioned whether Wynn had standing.

3 Debtors claim that the GGW entities are Delaware
4 corporations. To support their position, debtors cite the
5 petition docket number 1 and rely heavily on a quote from In
6 re ALT Hotel, 479 B.R. 781, Bankruptcy, Northern District of
7 Illinois, 2012, where the court determined that Delaware law
8 would not permit a claim for inside reverse piercing of the
9 corporate veil.

10 Debtors' assertion that Wynn lacks standing is not
11 persuasive. As an initial matter, the petitions do not
12 contain any information from which the Court could determine
13 in which state they were purportedly incorporated. And
14 debtors are limited liability companies, not corporations.

15 Although debtors have not presented any evidence
16 substantiating their claim that the GGW entities are
17 Delaware limited liability companies, Wynn concedes this
18 fact and the evidence demonstrates that the GGW entities are
19 in fact Delaware LLCs.

20 Nevertheless, from In re ALT Hotel is legally and
21 factually distinguishable from this case and is not
22 controlling precedent.

23 To have standing in a bankruptcy case, a party
24 must meet three requirements:

25 One, qualify as a party in interest under 1109(b).

1 Two, meet Article Three constitutional
2 requirements.

3 And, three, federal prudential standing
4 requirements.

5 And that's from In re Thorpe Insulation Company,
6 677 F.3d 869, Ninth Circuit, 2012.

7 Although section 1104(a) provides that a party in
8 interest may request that the court order the appointment of
9 a Chapter 11 trustee, it does not define "party in
10 interest."

11 Section 1109(a) states that:

12 "A party in interest, including the
13 debtor, the trustee, a creditors
14 committee, an equity security holders
15 committee ... may raise and may appear
16 and be heard on any issues in a case
17 under this chapter," which is Chapter
18 11."

19 The party in interest standard has generally been
20 construed broadly. Section 1109(b) was not intended to
21 provide standing exclusively to the listed examples but
22 rather was meant to give standing to anyone who has a
23 legally protected interest that could be affected by a
24 bankruptcy proceeding.

25 The standard has also been articulated as whether

1 a party has a sufficient stake in the proceedings and that
2 is In re Thorpe.

3 Wynn satisfies the 1109(a) party in interest
4 requirement. The evidence demonstrates that he has a,
5 quote, legally protected interest that could be affected by
6 this case.

7 In fact, debtors each listed a disputed claim of
8 over \$10,000,000 owed to Wynn on this list of creditors
9 holding 20 of the largest unsecured claims as well on
10 Schedule F, creditors holding unsecured non-priority claims.

11 Additionally, in support of the opposition,
12 debtors submitted portions of Kluger's two depositions which
13 were attached to Ron Tim's declaration that was filed on
14 3/29/13.

15 Kluger was being deposed as the designee of GGW
16 Direct and Brands in the alter ego litigation. This
17 demonstrates that Wynn, who is the plaintiff in the alter
18 ego litigation, has an interest in this case.

19 Further, as the plaintiff in the alter ego
20 litigation, Wynn also is sufficiently affected by this case
21 to be a real party in interest because the automatic stay
22 has put that litigation on hold, which has delayed Wynn's
23 attempt to collect against debtors.

24 Additionally, Wynn contends that the GGW cases are
25 being used to impermissibly hide assets, which is another

1 basis for the Court to find that the GGW cases affect Wynn.

2 In terms of Article Three standing, a party has
3 Article Three standing if the party can demonstrate an
4 injury that in fact that is traceable to the challenged
5 action and that is likely to be redressed by a favorable
6 decision.

7 In the context of a Chapter 11 case, Article Three
8 standing exists where the participant holds a financial
9 stake in the outcome of the proceeding such that the
10 participant has an appropriate incentive to participate in
11 an adversarial forum to protect his or her interests.

12 Wynn has Article Three standing because it has
13 disputed claims against debtors for millions of dollars and
14 it has an incentive to protect its interests.

15 And, as noted above, when the GGW cases were
16 filed, Wynn's alter ego litigation was stayed which
17 necessarily delayed Wynn from collecting.

18 Further, Wynn alleges that debtors are using
19 bankruptcy to shield Francis's assets from Wynn which would
20 be redressed if the Court grants the motion.

21 In terms of prudential standing, that is a
22 judicially self-imposed limit on the exercise of federal
23 court jurisdiction. It's founded in concerns about the
24 proper and properly limited role of the courts in a
25 democratic society.

1 One requirement of prudential standing is that a
2 party's grievance must fall within the zone of interests to
3 be protected or regulated by the statute or constitutional
4 guarantee in question.

5 Another requirement of prudential standing is that
6 a litigant must assert his or her own rights or interests
7 and not those of a third party.

8 The Court finds that Wynn has prudential standing.
9 Wynn's grievance falls within the zone of interests
10 protected by 1104(a) because the purpose of the statute is
11 to protect creditors.

12 That's In re Savino Oil and Heating Company, 99
13 B.R. 518, Bankruptcy, Eastern District of New York, 1989,
14 stating that 1104(a) is an important protection to
15 creditors, that courts should not lightly disregard or
16 encumber with overly protective attitudes towards debtors in
17 possession.

18 Turning to the substance of the motion.

19 Wynn seeks appointment of a Chapter 11 trustee
20 pursuant to both subsection (a)(1) and (a)(2) of 1104.

21 Under 1104(a)(1) Wynn asserts this cause to
22 appoint a trustee based upon the pre-petition conduct of
23 Francis and the debtors.

24 To support his position, Wynn cites a number of
25 cases. In re Bibo, which is a Ninth Circuit; In re PRS; In

1 re -- I can't pronounce it -- it's B-O-I-N-E-A-U; and In re
2 Microwave Products America.

3 Using these cases as support, Wynn contends there
4 is cause to appoint a trustee in this case because Francis
5 has, quote: total control over debtors for his own benefit
6 and historically has used debtors as his personal piggy-bank
7 as part of a scheme to hide his assets and he continues to
8 do so irrespective of the recent appointment of Dale as,
9 quote, manager.

10 In Wynn's view, Dale's appointment as manager was
11 simply a smokescreen that in reality perpetrated Francis's
12 unbridled control over and access to debtors' assets. Wynn
13 asserts that debtors' current management is a sham and
14 constitutes more than ample cause for appointment of the
15 trustee.

16 Wynn also asserts there is cause based upon what
17 it characterizes as Francis's scheme to transfer debtors'
18 rights related to a Direct TV deal to Francis's other
19 companies. Wynn argues that Francis attempted to transfer a
20 revenue stream from Direct TV to a Francis-related entity
21 when faced with Wynn exercising its remedy through the alter
22 ego litigation.

23 To support this contention, Wynn email
24 correspondence between Francis and a Direct TV
25 representative.

1 Wynn also filed an ex parte application for order
2 authorizing Wynn Las Vegas to file under seal Argyle Media
3 license agreement related to motion for order directing the
4 appointment of trustee.

5 On April 8th, the Court granted the ex parte
6 application. A review of the email exchange highlighted by
7 Wynn as well as the document that was filed under seal
8 substantiates Wynn's contention that Francis attempted to
9 change the licensor with Direct TV from GGW Direct to Argyle
10 Media Sales, LLC.

11 Wynn asserts that Francis's intent was to transfer
12 these rights from GGW Direct, an entity subject to the alter
13 ego litigation to Argyle, an entity that was not. Debtors
14 do not explain why Francis sought to transfer the rights
15 from GGW to Argyle.

16 Instead, debtors contend that courts will only
17 appoint trustees in cases where the debtor will continue
18 misconduct. Debtors state that there is no evidence
19 presented of any misconduct pre-petition or post-petition
20 and even if there were pre-petition conduct, in the past,
21 debtors have a new management team since the time of the
22 alleged mismanagement.

23 For this proposition and for the fact that debtors
24 claim a trustee should not be appointed, they rely on In re
25 General Oil Distributors and In re Sundial Limited.

1 Here, the Court finds there is sufficient cause to
2 appoint a Chapter 11 trustee pursuant to 1104(a)(1). This
3 finding is based on evidence of Francis's control over
4 debtors while he was the manager of Pablo Holdings which was
5 through late October, early November of 2012, as well as
6 what the Court perceives as Francis's continued control over
7 debtors since that time when Dale was purportedly promoted
8 to manager of Pablo Holdings.

9 The evidence is clear that despite debtors'
10 protestations to the contrary, that the trustee of the trust
11 controlled debtors, Francis was in complete control of
12 debtors through at least early November of 2012.

13 Pablo Holdings' operating agreement demonstrates
14 that the manager of Pablo -- who was Francis, not the member
15 as asserted repeatedly by debtors -- had absolute unfettered
16 discretion and complete control over Pablo Holdings, which
17 in turn controlled GGW Brands, the holding company of the
18 other GGW entities.

19 Further, although debtors seek to distance
20 themselves from Francis and claim that he often loudly
21 voices opinions or recommends to stamp on others regarding
22 whether someone should be hired or fired, the truth is that
23 at least through early November Francis had the ultimate say
24 in hiring and firing.

25 Francis alone determined how much he would be

1 paid, which was limited only by debtors' income.

2 From a review of his personal AmEx bills, it is
3 beyond dispute that GGW funds were used to pay Francis's
4 personal expenses. He also used GGW assets to pay for
5 lawyers who represented him personally.

6 Although Kluger testified that when he was first
7 engaged by debtors, he researched whether Francis's personal
8 legal fees were properly deducted and he concluded that most
9 of the legal expenses incurred were legitimate business
10 expenses. Because in most cases the assets of the companies
11 were being protected, that does not alter the analysis.

12 The implication is that some of the expenses might
13 not have been considered legitimate expenses or that Kluger
14 did not research all of the expenses.

15 Further, debtors' assertion that Francis did not
16 have any control over the GGW entities is belied by the fact
17 that he negotiated with and terminated vendors on behalf of
18 the GGW entities and that is evidence related to the Direct
19 TV emails and the Molten emails.

20 Further, the timing of Francis's attempt to change
21 the Direct TV licensor from GGW Direct to Argyle Media Sales
22 further supports the Court's belief that a trustee is
23 warranted.

24 On 7/20/2012, the Nevada state court issued a
25 preliminary injunction in the alter ego litigation which

1 continued to freeze 2,000,000 in funds claimed to belong to
2 GGW Brands and/or Direct which were held in David Houston's
3 client trust account. Five days later, Francis attempted to
4 change the Direct TV licensor from GGW to Argyle Media
5 Sales, LLC.

6 Wynn also alleges that the attempted transfer to
7 Argyle should arouse suspicion about the nature and purpose
8 of any payments or transfers of assets from any of the
9 debtors to Argyle.

10 Wynn asserts that Argyle is a cancelled California
11 LLC that was registered with the Secretary of State under
12 Tim's name. Wynn does not present any evidence supporting
13 this assertion and none is in the record.

14 Wynn also highlights that Aftergood signed the
15 agreement purportedly between Direct TV and the GGW Brands
16 where Mr. Francis was trying to change the licensor to
17 Argyle which Wynn asserts is reason to believe that Francis
18 controls everything and everyone related to debtors in an
19 attempt to manage the assets of his company.

20 Undercutting Wynn's arguments, only slightly
21 though, on this point, is Francis's seeming nonchalance in
22 response to Direct TV's reluctance to accept the amended
23 license agreement.

24 If Francis were determined to divert assets at
25 that time, it seems likely he would have made more of an

1 effort to persuade Direct TV on this point.

2 Although debtors argue that Dale is now the
3 manager of the debtors and Francis purportedly has no actual
4 power or control over the GGW entities, the Court finds that
5 such an assertion is not credible.

6 It is true that Dale now claims to be the manager
7 of Pablo Holdings. However, the timing of Dale's promotion
8 and his independence are questionable. The Court notes that
9 Dale was purportedly promoted to manager of Pablo Holdings
10 in late October, early November, which was approximately the
11 same time as the Wynn -- as Wynn filed its motion for
12 appointment of a limited receiver in the California judgment
13 litigation.

14 Further, the Court has serious concerns regarding
15 Dale's ability to manage the GGW entities. It's undisputed
16 that Dale was debtors' human resources manager at least
17 until August 29, 2012 and he concedes that at that time, his
18 knowledge of and authority over debtors was extremely
19 limited.

20 By late October, early November, Dale had been
21 elevated by Asia Trust Limited as trustee of the Ridgewood
22 Trust to purportedly manage Pablo Holdings and therefore
23 debtors.

24 He at that point was then responsible for what Mr.
25 Yaspan claims were 13 employees and at least 22 independent

1 contractors and a multimillion-dollar brand.

2 Debtors submitted Dale's declaration in support of
3 their opposition and they certainly could have provided
4 information regarding Dale's education, background and
5 experience that could have substantiated that he has the
6 knowledge, ability and background to manage debtors.

7 Debtors did not provide this information or about
8 the controller, the letter of whom debtors claim has years
9 of experience as a controller. The lack of information
10 submitted by debtors on the important issue of the
11 experience of their management team is significant.

12 Additionally, as the Court noted during the 341(a)
13 meeting of creditors, Dale appeared and testified on behalf
14 of debtors. Dale testified that he works approximately four
15 to five hours per week for the GGW entities and he is
16 currently working for an unrelated entity called Movie Clips
17 as an HR manager.

18 Although Dale testified he is the decision maker
19 for the GGW entities, he admitted relying on the department
20 heads to make day-to-day operating decisions.

21 Although Dale claims that Francis no longer has
22 any control over debtors, the Court does not believe this to
23 be true. Debtors' explanation of GGW Direct's \$65,000
24 payment to Kiki Entertainment that was made on 2/7/13, which
25 coincided with the date that the GGW entities filed for

1 bankruptcy, demonstrates that Francis still controls
2 debtors.

3 According to Tim, the \$65,000 payment from GGW
4 Direct to Kiki Entertainment occurred because Perfect
5 Science Labs needed to wire funds from its account but did
6 not have the ability to do so; therefore, GGW Direct agreed
7 that Perfect Science Labs could transfer money from its
8 account and then GGW Direct would forward the money to Kiki
9 Entertainment.

10 What Tim did not state is that Francis is the
11 manager of Perfect Science Labs and that evidence is
12 contained in the Langberg declaration, Exhibit 6 and Exhibit
13 D, the second Langberg declaration.

14 And even though Mr. Tim claims that the payment to
15 Kiki Entertainment was on behalf of Perfect Science Labs,
16 the evidence submitted to support this contention
17 demonstrates that Argyle Online, rather than Perfect Science
18 Labs, transferred \$65,000 into GGW Direct's account.

19 Additionally, the evidence related to the
20 \$274,250.52 payments made to Argyle Online within a week of
21 the GGW cases being filed also raises significant concerns
22 with the Court.

23 On February 19, 2013, GGW Direct reported paying
24 Argyle a total of \$214,250.52. Approximately a week later,
25 on 2/25 Argyle Online as the, quote, U.S. representative of

1 Path Media was paid an additional \$60,000 and then executed
2 a 95-day lease agreement for a total of 274,250.52 for the
3 use of the GGW trademarks.

4 The Tim 4/5 declaration and the 2/25 agreement
5 between Path Media and GGW Direct that purportedly
6 demonstrates the basis for the almost \$275,000 payment
7 appears strange to the Court for a number of reasons.

8 First, the agreement just happened to be dated two
9 days before debtors filed for bankruptcy, and it was for a
10 90-day period. There was no explanation why the agreement
11 is for such an odd number of days.

12 Second, even if it were a valid agreement, which
13 the Court is not convinced it is, the 274,250.52 amount of
14 the agreement is odd and it is exactly the same amount as
15 the total of the three payments that GGW Direct made within
16 a week of filing bankruptcy.

17 Finally, the agreement states explicitly that the
18 effective date was 2/25/13, which was the date of the last
19 \$60,000 payment to Argyle. GGW Direct, however, had paid
20 Argyle a total of more than \$214,000 a week before, on
21 February 19, 2013.

22 Therefore, the payments made on February 19th
23 raise issues regarding whether debtors as fiduciaries should
24 pursue a possible fraudulent conveyance or preference action
25 against Path Media and/or Argyle Online to recover these

1 payments.

2 It is undisputed that Path Media is owned by
3 Ridgewood Trust, the sole member of Pablo Holdings and In re
4 Pitt Penn Holding Company, 484 B.R. 25, Bankruptcy, the
5 District of Delaware, 2012, stated that a close relationship
6 between the transferor and transferee is one of the badges
7 of fraud for purposes of determining whether a transfer is
8 fraudulent under section 540(a).

9 Finally, debtors' repeated assertions that the
10 trustee of the trust, and not Francis, controls debtors is
11 not true. The Pablo operating agreement reveals that the
12 manager of Pablo Holdings, Francis and then Dale late
13 October, early November, and not its member Asia Trust
14 Limited, the trustee of Ridgewood Global Trust, is vested
15 with expansive control and power over Pablo and therefore
16 over debtors.

17 Section 9 of the Pablo operating agreement again
18 states that all management powers over Pablo are and shall
19 be exclusively vested in the manager and the member shall
20 not have any right to participate in any exercise, control
21 of management power or over the business and affairs of the
22 company.

23 As noted above, the Pablo agreement then lists
24 numerous functions of the manager demonstrating that the
25 manager, and definitely not the member, has unlimited

1 discretion regarding the management of Pablo.

2 In light of this unambiguous language in the Pablo
3 operating agreement, it's clear that the debtors continued
4 statement that the trustee of the trust, and not Francis,
5 has control over debtors is absolutely not true, despite
6 debtors' claim, Ridgewood Trust, as a member of Pablo has no
7 power over that entity.

8 As a result, Ridgewood Trust has no power over
9 debtors which are controlled by Pablo. Control over Pablo,
10 and therefore control over debtors was vested exclusively in
11 the manager of Pablo.

12 According to Dale, he was elevated -- and that's a
13 direct quote from his declaration -- by Asia Trust Limited,
14 as trustee of the Ridgewood Global Trust, to be manager of
15 Pablo. Again, Dale doesn't state exactly when that
16 occurred.

17 And, as I mentioned previously during the 341(a)
18 meeting, he had mentioned that he had not applied for the
19 manager position and that he learned about his appointment
20 during a telephone call from Robert Tim, who is representing
21 debtors and who has filed a number of declarations before
22 this Court.

23 On January 28, 2013, Dale signed a declaration in
24 which he stated that he was custodian of records of Pablo
25 Holdings and the GGW entities. And that declaration was

1 Exhibit C to the second Langberg declaration that was filed
2 with the reply.

3 Attached to the declaration were copies of
4 operating agreements for the GGW entities as well as the
5 Pablo operating agreement.

6 Exhibit D-1 to Dale's January 28, 2013 declaration
7 is an amended and restated operating agreement of GGW
8 Brands, a Delaware limited liability company.

9 That operating agreement indicates that it was
10 amended and restated on February 19th and that the business
11 affairs of GGW Brands shall be managed by a board of
12 managers consisting of one manager appointed by the sole
13 member. The initial manager shall be Christopher Dale and
14 the manager may be replaced at any time by the member, which
15 is defined as Pablo later in the agreement.

16 On the last page under the word "Member," which is
17 listed as Pablo Holdings, there is a stamp that states "ATP
18 Directors Limited by its duly authorized officer," and there
19 are signatures of Angela Pope and Lynette -- and her last
20 name is illegible.

21 The problem with the GGW amended operating
22 agreement is that pursuant to the Pablo operating agreement,
23 the manager of Pablo was in exclusive, complete control over
24 Pablo. Therefore, it appears that the GGW operating
25 agreement might not be a valid effected document because it

1 was signed on behalf of Pablo Holdings by non-manager
2 parties.

3 The Court recognizes that even if Francis was
4 guilty of fraud, dishonesty, incompetence or gross
5 mismanagement, that does not necessarily mean that there is
6 cause and that a trustee must be appointed -- and that a
7 trustee doesn't have to be appointed if the Court is
8 satisfied that current management is free from the taint of
9 prior management.

10 As noted above, the evidence is not sufficient for
11 the Court to be satisfied that debtors' current management
12 is competent to be managing the debtors or that they are
13 acting independently.

14 Although the evidence is insufficient for this
15 Court to untangle the intricate web of interrelated
16 companies in this case, it's abundantly clear that all of
17 the interrelated companies are somehow related to Francis
18 and are controlled by him or someone acting on his behalf.

19 Therefore, the Court finds there is cause to
20 appoint a trustee under 1104(a).

21 Turning to -- that was 1104(a)(1).

22 Turning to 1104(a)(2), Wynn contends that
23 appointment of a trustee is warranted under (a)(2) because,
24 quote, "A trustee is essential to remedy the vacuum created
25 by debtors' abdication of control to Francis and the

1 resulting self-dealing."

2 The debtors do not exist independently from
3 Francis and cannot be trusted to do anything other than what
4 is in the best interest of Francis.

5 No rehabilitation is in prospect for which any
6 management expertise would be required, and in light of the
7 puppet managers installed by Francis, it appears that the
8 debtors' management would lack the knowledge and expertise
9 to lead to any such rehabilitation.

10 Wynn cites several cases to support its view that
11 under 1104(a)(2) the court employs a flexible standard and
12 courts consider several factors when determining whether to
13 appoint a trustee.

14 Debtors counter that appointment of a trustee
15 would be contrary to the interests of creditors because
16 debtors intend to pay all legitimate claims in full, debtors
17 are being professionally managed with an accounting staff
18 and experienced controller, and appointment of a trustee
19 would quickly cause the economic collapse of the GGW
20 entities since they will lose their right to use the Girls
21 Gone Wild brand.

22 And a trustee would not have the same motivation
23 as the debtors' management to reorganize the business and
24 preserve its enterprise value.

25 Debtors cite two cases for the proposition that

1 deciding whether to appoint a trustee pursuant to section
2 1104(a) is essentially a cost benefit analysis. And debtors
3 assert that the factors listed above illustrate that the
4 cost of appointing a trustee outweigh the benefits.

5 Both Wynn and debtors frame the same legal
6 standard in slightly different terms. As noted above, when
7 determining whether to appoint a trustee under 1104(a)(2),
8 the standard is flexible and courts examine the four factors
9 that I previously mentioned.

10 Further, as noted above, even if current
11 management is competent and honest, appointment of a trustee
12 may be warranted if management was recently appointed but
13 does not have the expertise that an exceptional trustee
14 would have in reorganizing the debtor.

15 In terms of trustworthiness of debtors. The
16 essence of Wynn's argument is that debtors cannot be
17 trusted. In Wynn's view, current management is merely a
18 puppet who is controlled by Francis and after Wynn took
19 steps to collect from the GGW entities, debtors' management
20 structure was changed to avoid impending court orders.

21 Wynn argues that debtors do not exist
22 independently from Francis and cannot be trusted to do
23 anything other than what is in the best interest of Francis.

24 Debtors acknowledge that Francis still has a role
25 with debtors as a consultant but maintain he has no actual

1 power or control over the GGW entities. That assertion is
2 belied by Francis's relationship with Path Media.

3 Debtors assert that if a trustee were appointed,
4 the GGW entities would face, quote, economic death, end
5 quote, because Path Media, an allegedly unaffiliated
6 company, would purportedly not renew an intellectual
7 property license that exists between Path Media and debtors.

8 Contrary to debtors' assertion, the evidence
9 demonstrates that Path is owned by Ridgewood Trust which was
10 settled by Francis and therefore is not an unaffiliated
11 company.

12 Path Media obtained the IP rights which debtor
13 believes to be incredibly valuable because Path Media's
14 failure to renew those rights would result in debtors'
15 economic death for no consideration. That was from Kluger's
16 deposition.

17 Through his control over Path Media and its
18 exceedingly valuable IP rights, Francis exercises complete
19 control over debtors. Debtors' assertion that Francis
20 exercises no power or control over debtors therefore rests
21 on shaky ground, undermining debtors' credibility.

22 Further, the fact that debtors chose to
23 characterize Path Media as an unaffiliated company also
24 seriously undercuts debtors' trustworthiness.

25 Debtors' trustworthiness is also called into

1 question by their representations and filings before this
2 Court regarding who controls debtors.

3 The GGW entities' assertion that the trustee of
4 the trust and not Francis purportedly had ultimate say
5 regarding the management of the companies is not true, as
6 analyzed above.

7 Control over Pablo Holdings, and therefore control
8 over debtors, was and continues to be vested in the manager
9 of Pablo Holdings.

10 Although debtors claim that Dale is now in charge,
11 the Pablo operating agreement and the evidence related to
12 transfers, both into and out of the GGW entities' bank
13 accounts a few days before filing, support Wynn's contention
14 that Dale is a figurehead.

15 Further supporting that contention is the fact
16 that Dale only works four to five hours a week for debtors,
17 has outside employment and he leaves day-to-day management
18 decisions to managers who were not named and identified and
19 their credentials are not known to the Court.

20 Further, the fact that Dale is now purportedly
21 Pablo Holdings' manager does not engender an increase in the
22 debtors' trustworthiness. It is difficult for the Court to
23 believe that Dale, who in August of 2012 was a human
24 resources manager and who knew little about debtors, is now
25 running a multimillion-dollar brand.

1 As mentioned Dale admitted working only four to
2 five hours a week and he leaves others to make the day-to-
3 day decisions.

4 Debtors' misrepresentation to this Court about
5 Pablo Holdings' true organizational structure as well as
6 significant questionable payments debtors made a few days
7 before filing for bankruptcy and the fact that debtors were
8 not able to produce a large, over 50,000 bill that was
9 purportedly for legal services, calls into question the
10 trustworthiness of debtors and weighs heavily in favor of
11 appointing a trustee.

12 In terms of debtors' past and present performance
13 and their prospects for rehabilitation, the Court has very
14 little information about debtors' past and present
15 performance.

16 The Court notes that even though the cases were
17 filed and debtors claim that they have continued to operate
18 their business during the administrative period and have
19 even noticed an uptake in sales due to the publicity
20 surrounding the filing of the cases, the Court doesn't have
21 any information regarding the specifics of the debtors'
22 business.

23 I did review the initial status report that was
24 filed by debtors' counsel. It does not provide any level of
25 detail regarding the debtors' business.

1 Further, the Court notes that debtors did not file
2 the typical, quote, first day, end quote, motions that are
3 filed in most corporate Chapter 11 cases.

4 For example, debtors did not seek authority to pay
5 pre-petition payroll even though they claim they employ --
6 now, they claim 13 employees. I believe in one pleading it
7 said they had 17 employees and numerous independent
8 contractors.

9 Additionally, debtors did not file a motion
10 deeming the utilities to be adequately assured of future
11 performance pursuant to 11 U.S.C. section 366. Therefore,
12 debtors' electricity, water or other utilities could be
13 terminated without warning at this point if debtors were
14 behind on their payments.

15 Debtors have also, as noted, not timely filed
16 monthly operating reports, although Mr. Yaspan mentioned
17 that there was a monthly operating report filed last
18 evening.

19 Therefore, the Court does not have any information
20 regarding the debtors' performance. The fact that
21 \$2,000,000 in funds belonging to GGW Brands and/or Direct
22 were frozen by court injunction sometime in 2012 is not
23 encouraging.

24 Although Dale, the person who claims to currently
25 be in charge of debtor, states that debtor is currently a

1 profitable business that is paying its bills and meeting its
2 obligations, it is difficult to believe this given that Dale
3 only works four to five hours a week.

4 Further, GGW Direct allowed Perfect Science Labs
5 and/or Argyle Online to use their account to transfer funds
6 the day that the bankruptcy was filed.

7 And little more than a month before debtors filed
8 for bankruptcy, GGW Direct paid Perfect Science Labs'
9 American Express bill that was issued in the name of Perfect
10 Science Labs and Joe Francis. It is undisputed that Francis
11 is the manager of Perfect Science Labs.

12 As I mentioned, debtors were not able to provide a
13 copy of a 53,000 invoice or bill for a payment made to the
14 attorney who Mr. Tim claims is an attorney representing
15 debtors in a Mexico litigation. Although the reason for
16 allowing these transfer of payments is unknown and maybe
17 questionable, it does demonstrate that debtors do not have
18 appropriate internal controls in place.

19 Therefore, this factor weighs in favor of
20 appointing a trustee.

21 In terms of the level of confidence of the
22 business community and creditors in current management, it
23 is clear that Wynn obviously does not have any confidence in
24 debtors' current management. And also debtors dispute
25 Wynn's claim, Wynn is by far debtors' largest creditor.

1 Debtors allege the current management consists of
2 Dale as lead executive and that debtors are being
3 professionally managed with an accounting staff and
4 experienced controller. Debtors acknowledge that Francis
5 still has a role as a consultant.

6 Regarding Dale, the Court, as mentioned, has no
7 information about his background, expertise or any other
8 information that would give the Court confidence that he
9 would be able to manage debtors.

10 Likewise, there's no evidence demonstrating how
11 the business community as a whole is likely to view Dale.
12 He was an HR manager until sometime at the end of October,
13 early November. He is also now an HR manager for an
14 unrelated company.

15 Dale appears to have risen in the ranks quite
16 quickly and there's no evidence demonstrating his education,
17 business skills or acumen and/or managerial skills. In
18 fact, Dale's testimony during the 341(a) meeting supports
19 Wynn's and the Court's lack of confidence in Dale to manage
20 debtors.

21 The Court also has no information about any other
22 managers of debtors other than Dale's conclusory statement
23 that the controller has years of experience as controller of
24 companies.

25 On balance, the Court finds that this factor

1 weighs in favor of appointing a trustee.

2 Finally, benefits of appointment balanced against
3 costs.

4 If the Court appoints a Chapter 11 trustee, many
5 of the concerns regarding transparency and Francis's level
6 of control would be alleviated. A trustee would not have
7 any conflicts of interest that would prevent him or her from
8 pursuing possible claims for fraudulent transfers and/or
9 preferences.

10 Debtors' current management, on the other hand,
11 would be less likely to pursue such claims because of their
12 previous personal and professional relationships with
13 transferees.

14 A similar concern was before the court in In re
15 Microwave Products of America, Inc., 102 B.R. 666. There,
16 the court found that appointment of a trustee would be in
17 the best interests of the creditors, in part because of the
18 existence of several transactions that the court saw as
19 questionable, including questionable accountings regarding a
20 \$5,000,000 promissory note.

21 A director claimed to have sold the note at a
22 discounted price to a company owned by the director.
23 However, after the date of the supposed sale, the note was
24 still on debtor's books as a \$5,000,000 asset.

25 The CFO sought direction from the board of

1 directors regarding this transaction, but the board did not
2 advise him on how to reflect the transaction on the debtor's
3 books.

4 The court noted that because the debtor is not in
5 a strong posture to pursue possible claims that may have
6 resulted from conflicts of interest and fraudulent
7 transfers, a trustee would likely be able to investigate
8 claims that could result in additional sums of money coming
9 into the estate.

10 The court also stated that because of the erosion
11 of confidence in the debtor, there is likely to be increased
12 litigation which will result in escalating legal costs to
13 the estate.

14 Many of the same concerns are present here.
15 Debtors have engaged in questionable transactions with
16 insiders, and current management would not have an incentive
17 to attempt to pursue possible fraudulent transfer or
18 preference claims.

19 Debtors here are also embroiled in litigation
20 which is likely to lead to more litigation costs to the
21 estate.

22 Debtors contend that if a trustee is appointed,
23 Path Media would not renew IP licenses with debtors that are
24 crucial to their business. This assertion is questionable,
25 and even if it were true, there is no explanation why a

1 trustee would not be able to secure use of such rights.

2 Although a trustee will need time to familiarize
3 him or herself with the debtors' business, as noted Dale,
4 who is purportedly in charge of debtors, only assumed his
5 current position, at the latest, early November.

6 He has outside employment at an unrelated company
7 and he only works four to five hours per week for debtors.
8 He also leaves day-to-day operations to unnamed department
9 heads.

10 There was also no evidence demonstrating that
11 Dale, even if he worked full-time for debtors, would have
12 the knowledge, experience or expertise to manage debtors
13 successfully.

14 As analyzed above, on balance, the Court finds
15 that appointment of a Chapter 11 trustee would be in the
16 best interests of the creditors pursuant to 1104(a)(2).

17 So that concludes the hearing.

18 Ms. Law, in terms --

19 I guess it's -- Wynn needs to upload an order and
20 the order -- it's not going to be, oh, my goodness a two-
21 hour order. It's going to be about three lines, which will
22 be for the reasons stated on the record.

23 And can you get that uploaded today?

24 MR. PAGAY: Yes, your Honor, I can. I was hoping
25 you'd say that I could just refer to the record.

1 THE COURT: Yeah. Just for the reasons stated on
2 the record.

3 MR. PAGAY: Yes, your Honor.

4 THE COURT: You can refer to (a)(1) and (a)(2) --

5 MR. PAGAY: Will do so.

6 THE COURT: -- and that's it.

7 And then after that is on the docket, Ms. Law, I
8 believe that the U.S. Trustee needs to determine who would
9 be a good possible trustee in this case. And what's the
10 timing on that?

11 MS. LAW: Your Honor, with respect to appointment
12 of a trustee, the U.S. Trustee needs to confer with the
13 parties in interest in this case first, speak to them about
14 qualifications of trustees and that sort of thing. It
15 depends on how fast I can talk to debtors' attorneys and
16 movant.

17 Once that is done, I will speak to the U.S.
18 Trustee. He is aware of the matter. And then we will
19 interview likely candidates.

20 And then once that is done, we will get the
21 statement of disinterestedness from the candidate and then
22 we will do the notice of appointment as well as the proposed
23 order approving that notice of appointment.

24 If parties can talk to me within today or
25 tomorrow, then I believe that by -- within two or three

1 days, I'll be able to finish the process.

2 THE COURT: Okay. Well, you have them all here.
3 You have a captive audience, so I suggest you all go outside
4 and try to come to some agreement in terms of the criteria
5 for a trustee in this case.

6 MR. YASPAN: Might I ask a question?

7 THE COURT: Yes, Mr. Yaspan.

8 MR. YASPAN: Is the Court inclined to appoint the
9 same trustee for all four cases? Now, the Court doesn't
10 appoint, but let me -- maybe I should ask it to the trustee.

11 Are we going to have one trustee or four trustees?

12 THE COURT: I think that's something that the U.S.
13 Trustee probably needs to consider after speaking with the
14 parties and finding out more information; is that correct,
15 Ms. Law?

16 MS. LAW: Yes, your Honor. There's been no pre-
17 determination of whether it's going to be one or four in
18 anticipation of whether the Court would or would not grant
19 the motion.

20 So the U.S. Trustee has not made a determination
21 of whether we should appoint one or whether we should
22 appoint four.

23 I believe -- and I'm speculating -- that Mr.
24 Yaspan's concern is regarding cost of trustees.

25 MR. YASPAN: Yes.

1 MS. LAW: So --

2 MR. YASPAN: As well as we don't need to have
3 trustees suing each other, perhaps.

4 MS. LAW: Well, your Honor, you know, I can't
5 determine at this point whether in fact there will be
6 conflicts, whether there will be issues or not issues.

7 The testimony at the 341(a) suggests that the
8 debtors ran this as one large enterprise rather than
9 respecting the separate legal entities, but I need to confer
10 with the U.S. Trustee, and he will make a determination
11 whether there will be one or four or one to start and
12 possibly more later. I just don't know at this time.

13 THE COURT: Understood. And that's what I
14 expected.

15 Is there anything further, Mr. Yaspan?

16 MR. YASPAN: Yes, I do have another question.

17 In the approximate -- it wasn't two hours, but in
18 the hour and 45 minutes that we have been listening to the
19 Court's reasoned order, there was no mention made of
20 anything bad or good or even at all of GGW Magazine or GGW
21 Events.

22 Is the Court appointing a trustee for those as
23 well?

24 THE COURT: The order relates to all of them. As
25 Ms. Law stated and as the testimony in the 341(a) appears to

1 be that they were all treated as one entity and the Court is
2 appointing a trustee in all four cases.

3 MR. YASPAN: Thank you.

4 THE COURT: Thank you.

5 Is there anything further?

6 Okay. That concludes the hearing. Off the
7 record.

8 (Proceedings concluded.)
9
10

11 I certify that the foregoing is a correct
12 transcript from the electronic sound recording of the
13 proceedings in the above-entitled matter.
14

15 /s/ Holly Martens
16 Transcriber

4-15-13
Date

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